THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1994 CUMULATIVE SUPPLEMENT

Volume 19

Chapters 144 through 159I

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 19 contains the general laws of a permanent nature enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session, which are within the scope of such volume, and brings up to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Preface

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 144 through 159I of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
Opinions of the Attorney General.

The General Statutes of North Carolina
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VOLUME 19

Chapter 144.
State Flag, Motto and Colors.

Sec.
144-1. State flag.

§ 144-1. State flag.

The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one half more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th 1775" and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th 1776". (1885, c. 291; Rev., s. 5321; C.S., s. 7535; 1991, c. 361, s. 1.)

Effect of Amendments. — The 1991 amendment, effective June 24, 1991, near the end of the second sentence substituted "half" for "third", and substituted "'May 20th 1775'" and "'April 12th 1776'" for "'May 20th, 1775'" and "'April 12th, 1776,'" respectively.

Chapter 145.

Editor's Note. — The legislation and annotations affecting Chapter 145 have been included in a recently published replacement chapter.

Chapter 146.

State Lands.

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SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 13(a) provides: "Notwithstanding the provisions of Chapter 146 of the General Statutes, the tract of State-owned land known as the Old Health Farm Property, comprised of approximately 260.86 acres located adjacent to East Chatham Street in Cary, Wake County, shall not be exchanged or traded for other land, or interest therein, before July 1, 1993, nor may any contract or option for exchange or trade of such land be entered into before that date."

Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 13 provides: "Notwithstanding Chapter 146 of the General Statutes, the net proceeds derived from the sale of timber or other land products owned at the Brunswicktown State Historic Site shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Cultural Resources. The Department of Cultural Resources shall use these funds to replace the visitor center exhibits installed in 1967 at Brunswicktown, to provide additional site archaeology at Brunswicktown, and to make other improvements at the Brunswicktown State Historic Site. These funds shall remain available until June 30, 1995, and shall not revert until that time."

ARTICLE 2.

Dispositions.

§ 146-12. Easements in lands covered by water.

CASE NOTES

Easement Required. — The Department of Administration was required to grant an easement for the construction of a commercial marina by a private developer over public trust waters pursuant to this section (1991) and N.C. Admin. Code tit. 1, r. 6B.0605 (June 1987). Walker v. North Carolina Dep't of Env't, Health & Natural Resources, 111 N.C. App. 851, 433 S.E.2d 767 (1993).

§ 146-13. (Effective October 1, 1994 — See editor's note) Erection of piers on State lakes restricted.

No person, firm, or corporation shall erect upon the floor of, or in or upon, the waters of any State lake, any dock, pier, pavilion, boathouse, bathhouse, or other structure, without first having secured a permit to do so from the Department of Administration, or from the agency designated by the Department to issue such permits. Each permit shall set forth in required detail the size, cost, and nature of such structure; and any person, firm, or corporation erecting any such structure without a proper permit or not in accordance with the specifications of such permit shall be guilty of a Class 3 misdemeanor. The State may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3; G.S., s. 146-10; 1959, c. 683, s. 1; 1993, c. 539, s. 1051; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not exceeding 30 days" in the first sentence.

§ 146-15. Definition of net proceeds.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and

(2) Repealed by Session Laws 1993, c. 553, s. 52, effective July 24, 1993.

(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, no service charge shall be paid into the State Land Fund from proceeds derived from the sale of land or products of land owned or held for the use of the Wildlife Resources Commission, or purchased or acquired with funds of the Wildlife Resources Commission. (1959, c. 683, s. 1; 1993, c. 553, s. 52.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, added "and" at the end of subdivision (1) and deleted subdivision (2), which read "Amounts paid pursuant to G.S. 105-296.1 if any; and."

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

§ 146-22.2. Appraisal of property to be acquired by State.

(a) Where an appraisal of real estate or an interest in real estate is required by law to be made before acquisition of the property by the State or an agency of the State, the appraisal shall be made by a real estate appraiser licensed or certified by the State under Article 5 of Chapter 93A of the General Statutes.

(b) **(See notes)** The provisions of subsection (a) of this section shall not apply to appraisals of real estate or an interest in real estate made by personnel within the Department of Transportation when the appraisal is anticipated to be less than ten thousand dollars ($10,000). In the event that the real estate or interest in real estate is in fact appraised at ten thousand dollars ($10,000) or more, the Department of Transportation must comply with the provisions of subsection (a) of this section. (1989 (Reg. Sess., 1990), c. 827, s. 12; 1991, c. 94, s. 1; 1993, c. 519, s. 1; 1993 (Reg. Sess., 1994), c. 691, s. 1.)

Editor's Note. —

Session Laws 1993, c. 519, s. 1 amended section 2 of Chapter 94 of Session Laws 1991, as noted in the main pamphlet, so as to provide for a July 1, 1994 expiration date for subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 691, s. 1, effective July 6, 1994, provides: "Section 2 of Chapter 94 of the 1991 Session Laws, as amended by Section 1 of Chapter 519 of the 1993 Session Laws, reads as rewritten: 'Sec. 2. This act is effective upon ratification and expires July 1, 1995'."

§ 146-26.1. Relocation assistance.

In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the authority as set forth in Article 2 of Chapter 133 of the General Statutes. (1971, c. 540; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1993, c. 553, s. 52.1.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, deleted "same" preceding "authority" and substituted "set forth in Article 2 of Chapter 133" for "is given the Department of Transportation in Article 13 of Chapter 136."

ARTICLE 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency. (1957, c. 584, s. 6; G.S., s. 146-108; 1959, c. 683, s. 1; 1977, c. 425, ss. 1, 2; 1987, c. 738, s. 47(b); 1993, c. 561, s. 32(a).)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in the first sentence inserted "or gift" following "rental" and following "proposed disposition is a sale" and substituted "or gift shall not be made until" for "may only be made", and in the second sentence inserted "and gifts" following "rentals" and made related changes.

§ 146-28. Agency must file application with Department; Department must investigate.

CASE NOTES

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

§ 146-29. Procedure for sale, lease, or rental.

CASE NOTES

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

§ 146-29.1. Lease or sale of real property for less than fair market value.

(a) Real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit.

(b) Real property owned by the State or by any State agency may be sold, leased, or rented at less than fair market value to a public entity. "Public entity" means a county, municipal corporation, local board of education, community college, special district or other political subdivision of the State and the United States or any of its agencies. Any such sale, lease, or rental shall be reported at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, with the details of such transaction.

(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.

(d) Any sale, lease, or rental of real property made in conformity with the provisions of this section is not a violation of G.S. 66-58(a).

(e) All sales, leases, or rentals, prior to July 15, 1986, of real property owned by the State or any State agency are not invalid because of a conflict with G.S. 66-58(a) or with a prior version of this section, but any renewal of any such lease or rental agreement on or after July 15, 1986, shall conform to the requirements of this section. (1985, c. 479, s. 172(a); 1985 (Reg. Sess., 1986), c. 1014, s. 188(a); 1993, c. 561, s. 32(c).)

Editor's Note. —

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 26 provides: "The Department of Administration may enter into leases with the North Carolina Aquarium Society, a nonprofit corporation whose sole purpose is to assist financially the three State supported aquariums. Any leases entered into pursuant to this section are exempt from the provisions of G.S. 146-29.1."

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 179 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1992-93 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1992-93 fiscal year."

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, inserted the phrase "at least 30 days prior to the sale, lease, or rental" twice, once in the third sentence of subsection (b) following "shall be reported" and once in the second sentence of subsection (c) following "reported in detail."

§ 146-30. Application of net proceeds.

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.

(b) For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and

(2) Repealed by Session Laws 1993, c. 553, s. 52.2, effective July 24, 1993.

(3) A service charge to be paid into the State Land Fund.

(c) The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Environment, Health, and Natural Resources shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to provide water and sewers and to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, and the Office of State Budget and Management, with the approval of the Board of County Commissioners of Granville County, to build industrial access roads to industries on the Butner lands, to construct new city streets on the Butner lands, extend water and sewer service on the Butner lands, and repair storm drains on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, ss. 86, 86.1, 86.2, 87; c. 761, s. 166; 1983 (Reg. Sess., 1984), c. 1034, s. 164; c. 1116, s. 97(d); 1989, c. 727, s. 218(155); c. 799, s. 26; 1993, c. 321, s. 260.1; c. 553, s. 52.2.)

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 321, s. 260.1, effective July 1, 1993, added the subsection designations and, three times in present subsection (c), substituted "Capital Improvement Appropriations Act" for "Current Operations Appropriations Act."

Session Laws 1993, c. 553, s. 52.2, effective July 24, 1993, deleted present subdivision (b)(2), which read "Amounts paid pursuant to G.S. 105-296.1, if any."

SUBCHAPTER III. ENTRIES AND GRANTS.

ARTICLE 11.

Grants.

§ 146-43. (Effective October 1, 1994 — See editor's note) Cutting timber on land before obtaining a grant.

If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a Class 1 misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C.S., s. 7582; G.S., s. 146-51; 1959, c. 683, s. 1; 1993, c. 539, s. 1052; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the first sentence.

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-65. Exemptions from Chapter.

None of the provisions of Chapter 146 shall apply to:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation; or

(2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143B-452 through G.S. 143B-467 or to the exercise of all or any of such authority and powers,

Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement. (1957, c. 584, s. 6; G.S., s. 146-112; 1959, c. 683, s. 1; 1973, c. 507, s. 5; 1993, c. 553, s. 52.3.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, in subdivision (2) substituted "G.S. 143B-452 through G.S. 143B-467" for "G.S. 143-216 through G.S. 143-228.1."

ARTICLE 16.

Form of Conveyances.

§ 146-74. Approval of conveyances.

Every proposed conveyance in fee, including conveyances by gift, of State lands shall be submitted to the Governor and Council of State for their approval. If the proposed conveyance is of State lands with an appraised value of at least twenty-five thousand dollars ($25,000), and it is for other than a transportation purpose, the Council of State shall consult with the Joint Legislative Commission on Governmental Operations before making a final decision on the proposed conveyance. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this Article. (1957, c. 584, s. 7; G.S., ss. 143-147; 1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1993, c. 561, s. 32(b).)

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 561, which amended this section, in s. 115 provides:

"Notwithstanding the provisions of G.S. 146-74, the Division of Forest Resources, Department of Environment, Health, and Natural Resources, shall transfer in fee simple by gift the East Robeson Fire Tower and the approximately .91827 acres of land on which the tower is located approximately eight miles east of Lumberton on Highway 41 in East Howellsville Township, Robeson County, this being the property described in the deed dated March 7, 1935, and recorded in Deed Book 8-N, page 219, Robeson County Registry to the East Howellsville Volunteer Fire Department, Inc. The transfer under this section shall be evidenced by a deed executed in accordance with G.S. 146-75 and registered in accordance with G.S. 146-77."

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, inserted "including conveyances by gift" following "fee" in the first sentence.

Chapter 147.

State Officers.

Article 3.

The Governor.

Sec.
147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

Article 6.

Treasurer.

Sec.
147-69.2. Investments authorized for special funds held by State Treasurer.

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-9. (Effective October 1, 1994 — See editor's note) Unlawful to pay more than allowance.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be ninety-seven thousand six hundred dollars ($97,600) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s.

3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, changed the Governor's salary in subsection (a) from $93,777 to $97,600.

ARTICLE 3A.

Emergency War Powers of Governor.

§ 147-33.3. (Effective October 1, 1994 — See editor's note) Orders, rules and regulations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4B.

Business License Information Office.

§ 147-54.16. Master application system.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 6.

Treasurer.

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, and
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);
(2) General obligations of other states of the United States;
(3) General obligations of cities, counties and special districts in North Carolina;
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or without the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;
(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;
(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally

recognized rating service which rates the particular securities;

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems;

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or without the United States, provided:

a. That common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system;

b. That such corporation shall have paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

c. That in applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

d. That the book value of common and preferred stocks including securities convertible into common stocks shall not exceed fifty per centum (50%) of the book value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (1 1/2%) of the book value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.

e. Up to five per cent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars ($50,000,000).

f. Individual, common or collective trust funds of banks or trust companies provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) Obligations and securities of the North Carolina Enterprise Corporation, or of a limited partnership in which the North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds.

(10) A limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss.

(b1) With respect to investments authorized by subsection (b)(8), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(c) Notwithstanding the provisions of subsection (b) of this section, the State Treasurer may not invest the assets of the Retirement Systems listed in G.S. 147-69.2(b)(8), or the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, in the stocks, securities, or other obligations of a company or financial institution doing business in the Republic of South Africa during any period of time in which either of the following conditions apply:

(1) The company or financial institution or any subsidiary or division thereof is not a signatory to the Sullivan Principles; or

(2) The company or financial institution or any subsidiary or division thereof is a signatory to the Sullivan Principles but has received a Category III (failing) performance rating for compliance with the Sullivan Principles, as measured by Arthur D. Little, Inc., the official compliance monitor for the signatories to the Sullivan Principles.

For the purposes of this subsection, the Sullivan Principles are a code of business practices relating to equal employment opportunities for black, coloured, and Asian workers in South Africa, including but not limited to the following principles:

(1) Nonsegregation of the races in all eating, comfort, locker room and work facilities;

(2) Equal and fair employment practices for all employees;

(3) Equal pay for all employees doing equal or comparable work for the same period of time;

(4) Initiation and development of training programs that will prepare blacks, coloureds, and Asians in substantial numbers for supervisory, administrative, clerical, and technical jobs;

(5) Increasing the number of blacks, coloureds, and Asians in management and supervisory positions;

(6) Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities;

(7) Working to eliminate laws and customs that impede social and political justice.

The State Treasurer shall determine which companies and financial institutions have received favorable ratings solely from the annual report prepared by Arthur D. Little, Inc. The State Treasurer shall determine which companies are signatories to the Sullivan Principles and which companies are doing business in or with the Republic of South Africa based on current, reliable and accurate information that is readily available. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c.

1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, substituted "Global TransPark" for "Air Cargo Airport" in subdivision (b)(11).

§ 147-76. (Effective October 1, 1994 — See editor's note) Liability for false entries in his books.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 147-79. (See editor's note for date change) Deposits to be secured; reports of depositories.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 147-80. (Effective October 1, 1994 — See editor's note) Deposit in other banks unlawful; liability.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 148.

Editor's Note. — The legislation and annotations affecting Chapter 148 have been included in a recently published replacement chapter.

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150B-1. Policy and scope.

Article 2A.

Rules.

Part 2. Adoption of Rules.

150B-21.1. Procedure for adopting a temporary rule.

Part 4. Publication of Code and Register.

150B-21.18. North Carolina Administrative Code.

Article 3.

Administrative Hearings.

Sec.
150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.
150B-23.1. (Effective until June 30, 1995) Mediated settlement conferences.

Article 3A.

Other Administrative Hearings.

150B-38. Scope; hearing required; notice; venue.

ARTICLE 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Human Resources in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.
(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.
(4) The Department of Revenue, except that Parts 3 and 4 of Article 2A apply to the Department.
(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use,

including fees or charges, of any portion of a cargo airport complex.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Human Resources and the Department of Environment, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29, effective July 23, 1993.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(f) Exemption from All But Judicial Review. — No Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k).)

Effect of Amendments. —

The 1991 (Reg. Sess., 1992) amendment, effective July 24, 1992, deleted "to" preceding "to the acquisition" in subdivision (e)(10).

The 1993 amendment, effective July 23, 1993, repealed subdivision (e)(2).

The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, substituted "Global TransPark" for "Air Cargo Airport" in subdivisions (d)(5) and (e)(10).

CASE NOTES

History of Chapter. — The original Administrative Procedure Act (APA), codified as Chapter 150A, was effective until Dec. 31, 1985; the APA was rewritten in 1985 and recodified as Chapter 150B, with the new version becoming effective Jan. 1, 1986. Vass v. Board of Trustees, 108 N.C. App. 251, 423 S.E.2d 796 (1992).

The 1991 Amendment to this section merely confirms that when a person is aggrieved by agency action, the Administrative Procedure Act only "describes the procedures" for Office of Administrative Hearings review in the event the North Carolina General Assembly vests a party with the right to administrative review, such as a contested case hearing. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

Applied in Florence Concrete Prods., Inc. v. North Carolina Licensing Bd., 113 N.C. App. 270, 437 S.E.2d 877 (1994).

Stated in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992).

Cited in In re Philip Morris U.S.A., 108 N.C. App. 514, 424 S.E.2d 222 (1993); Brooks v. BCF Piping, Inc., 109 N.C. App. 26, 426 S.E.2d 282 (1993); House of Raeford Farms, Inc. v. State ex rel. Envtl. Mgt. Comm'n, 112 N.C. App. 228, 435 S.E.2d 106 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993).

§ 150B-2. Definitions.

CASE NOTES

"Agency". —

The Department of Revenue is an administrative agency of the State. Bailey v. State, 330 N.C. 227, 412 S.E.2d 295 (1991), cert. denied, — U.S. —, 112 S. Ct. 1942, 118 L. Ed. 2d 547 (1992).

A contested case hearing is distinguishable from a contested case. The phrase "contested case" extends beyond an adjudicatory hearing to include any agency proceeding, by whatever name called, wherein the legal rights, duties and privileges of a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

The result of a petitioner's ineffective attempts to file a petition for a contested case hearing was only a contested case. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Without the jurisdictional prerequisite of a contested case hearing, a petitioner cannot utilize § 131E-188(b) to appeal to the Court of Appeals. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

"Person Aggrieved". —

A power company satisfied the definition of a "person aggrieved" because its interest in having the Department of Environment, Health and Natural Resources prepare an Evironmental Impact Statement before issuing a permit and its interest in the air resources of the state were adversely affected by DEHNR's granting of a permit issued to another power company to construct and operate combustion turbine electric generating units. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

A landowner qualified as a "person aggrieved" as he owned and lived on property adjacent to the proposed site. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

While subdivision (1) expressly excepts local boards of education from the coverage of the Administrative Procedure Act, nonetheless the standards for judicial review set forth in § 150B-51 apply to appeals from school boards. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

Cited in Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 111 N.C. App. 875, 433 S.E.2d 814 (1993); Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994); Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 150B-4. Declaratory rulings.

CASE NOTES

Good Cause for Denial. — Good cause exists for denial of a request for a declaratory ruling where the denial is based on the existence of a prior agency ruling which necessarily required an interpretation on the same statute which is the subject of the request for declaratory ruling. Catawba Mem. Hosp. v. North Carolina Dep't of Human Resources, 112 N.C. App. 557, 436 S.E.2d 390 (1993).

Cited in Florence Concrete Prods., Inc. v. North Carolina Licensing Bd., 113 N.C. App. 270, 437 S.E.2d 877 (1994).

ARTICLE 2A.

Rules.

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. — An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A federal regulation.
(5) A court order.
(6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by submitting to the Codifier of Rules written notice of its intent to adopt a permanent rule.

(b) Review. — When an agency adopts a temporary rule it must submit the rule, the agency's written statement of its findings of need for the rule, and the notice of intent to adopt a permanent rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a), the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. — A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court may not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. — A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the rule or 180 days from the date the rule becomes effective, whichever comes first. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54.)

Editor's Note. — This section was amended by Session Laws 1993, c. 553, s. 54, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 2, provides: "This act shall be known as 'The Current Operations Appropriations Act of 1992.'"

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 182 is a severability clause.

Session Laws 1991 (Reg. Sess., 1992), c. 945, s. 6 provides: "In accordance with G.S. 150B-21.1(a)(2), State agencies may adopt temporary rules to implement this act, including temporary rules to establish minimum criteria. If, prior to adopting a temporary rule, an agency publishes notice of the text of the proposed temporary rule in the North Carolina Register and provides an opportunity for submitting written comment on the rule for at least 30 days after the text is published, the agency may specify an expiration date for the temporary rule of up to one year from the date the rule becomes effective notwithstanding G.S. 150B-21.1(e). An agency may not adopt a temporary rule under this section after 1 January 1993."

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 1, 1992, added subdivision (a)(6).

The 1993 amendment, effective July 24, 1993, in the last paragraph of subsection (a) substituted "Codifier of Rules" for "codifier."

Part 4. Publication of Code and Register.

§ 150B-21.18. North Carolina Administrative Code.

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules. (1973, c. 1331, s. 1; 1979, c. 69, ss. 3, 7; c. 541, s. 2; c. 688, s. 1; 1979, 2nd Sess., c. 1266, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1003, s. 2; c. 1022, s. 1(1), (19); c. 1032, s. 12; 1987, c. 774, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1111, s. 3; 1989, c. 500, s. 43(a); 1991, c. 418, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 2.)

Editor's Note. — The historical citation following this section in the main volume should read as follows: "(1973, c. 1331, s. 1; 1979, c. 69, ss. 3, 7; c. 541, s. 2; c. 688, s. 1; 1979, 2nd Sess., c. 1266, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1003, s. 2; c. 1022, s. 1(1), (19); c. 1032, s. 12; 1987, c. 774, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1111, s. 3; 1989, c. 500, s. 43(a); 1991, c. 418, s. 1.)"

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, added the fifth sentence.

ARTICLE 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

Cited in Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993); Walker v. North Carolina Dep't of Env't, Health & Natural Resources, 111 N.C. App. 851, 433 S.E.2d 767 (1993).

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.

(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(9), (10), 6(2), (3); 1987, c. 878, ss. 3-5; c. 879, s. 6.1; 1987 (Reg. Sess., 1988), c. 1111, s. 5; 1991, c. 35, s. 1; 1993 (Reg. Sess., 1994), c. 572, s. 2.)

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to cases filed on or after that date, in the third paragraph of subsection (a) replaced the former second sentence with the present on the same matter, in the third sentence deleted "two" preceding "cases" and added at the end "on the local appointing authority", and added the last sentence.

CASE NOTES

Filing of Petition for "Contested Case" Hearing. —

Because petitioner failed to file a petition for a contested case hearing within 60 days after petitioner received notice of the agency decision, the Office of Administrative Hearings was without subject matter jurisdiction over the petition, and the administrative law judge properly dismissed the petition. House of Raeford Farms, Inc. v. State ex rel. Envtl. Mgt. Comm'n, 112 N.C. App. 228, 435 S.E.2d 106 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 115 (1994).

Applied in Gaskill v. State ex rel. Cobey, 109 N.C. App. 656, 428 S.E.2d 474 (1993).

Stated in Clay v. Employment Sec. Comm'n, 111 N.C. App. 599, 432 S.E.2d 873 (1993).

Cited in North Carolina DOT v. Davenport, 108 N.C. App. 178, 423 S.E.2d

327 (1992); Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); Citizens for Clean Indus., Inc. v. Lofton, 109 N.C. App. 229, 427 S.E.2d 120 (1993); North Carolina DOT v. Davenport, 334 N.C. 428, 432 S.E.2d 303 (1993); In re Sullivan, 112 N.C. App. 795, 436 S.E.2d 862 (1993).

§ 150B-23.1. (Effective until June 30, 1995) Mediated settlement conferences.

(a) Purpose. — This section authorizes a mediation program in the Office of Administrative Hearings in which the chief administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. The purpose of the program is to determine whether a system of mediated settlement conferences may make the operation of the Office of Administrative Hearings more efficient, less costly, and more satisfying to the parties.

(b) Definitions. — The following definitions apply in this section:

(1) Mediated settlement conference. — A conference ordered by the chief administrative law judge involving the parties to a contested case and conducted by a mediator prior to a contested case hearing.

(2) Mediator. — A neutral person who acts to encourage and facilitate a resolution of a contested case but who does not make a decision on the merits of the contested case.

(c) Conference. — The chief administrative law judge may order a mediated settlement conference for all or any part of a contested case to which an administrative law judge is assigned to preside. All aspects of the mediated settlement conference shall be conducted insofar as possible in accordance with the rules adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(d) Attendance. — The parties to a contested case in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the settlement conference unless excused by the presiding administrative law judge.

(e) Mediator. — The parties shall have the right to stipulate to a mediator. Upon the failure of the parties to agree within a time limit established by the presiding administrative law judge, a mediator shall be appointed by the presiding administrative law judge.

(f) Sanctions. — Upon failure of a party or a party's attorney to attend a mediated settlement conference ordered under this section, the presiding administrative law judge may impose any sanction authorized by G.S. 150B-33(b)(8) or (10).

(g) Standards. — Mediators authorized to conduct mediated settlement conferences under this section shall comply with the standards adopted by the Supreme Court for the court-ordered mediation pilot program under G.S. 7A-38.

(h) Immunity. — A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(i) Costs. — Costs of a mediated settlement conference shall be paid one share by the petitioner, one share by the respondent, and an equal share by any intervenor, unless otherwise apportioned by the administrative law judge.

(j) Inadmissibility of Negotiations. — All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(k) Right to Hearing. — Nothing in this section restricts the right to a contested case hearing. (1993, c. 321, s. 25(b); c. 363, ss. 1, 3.)

Editor's Note. — Session Laws 1993, c. 363, s. 3, as amended by Session Laws 1993, c. 321, s. 25(b), made this section effective October 1, 1993 and applicable to contested cases pending on or commenced after the effective date. Session Laws 1993, c. 363, s. 3 further provides that this section will expire June 30, 1995.

Session Laws 1993, c. 363, which amended this section, in s. 2 provides: "The mediation program authorized by this act shall be evaluated under the direction of the Attorney General, who shall file a written report on the evaluation of the program on or before May 1, 1995. One copy of the report shall be sent to the Speaker of the House of Representatives, one copy shall be sent to the President Pro Tempore of the Senate, and five copies shall be sent to the Legislative Services Commission for placement in the Legislative Library."

Session Laws 1993, c. 321, s. 322 is a severability clause.

§ 150B-28. Depositions and discovery.

CASE NOTES

Cited in Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993).

§ 150B-29. Rules of evidence.

CASE NOTES

Stated in In re Freeman, 109 N.C. App. 100, 426 S.E.2d 100 (1993).

Cited in Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993).

§ 150B-34. Recommended decision or order of administrative law judge.

CASE NOTES

Cited in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

§ 150B-36. Final decision.

CASE NOTES

Applied in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

Cited in Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993).

ARTICLE 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

(a) The provisions of this Article shall apply to the following agencies:

(1) Occupational licensing agencies;

(2) The State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and

(3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article. (1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 6(3); 1989, c. 76, s. 30; c. 751, s. 7(45); 1991 (Reg. Sess., 1992), c. 959, s. 76.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" in two places in subdivision (a)(2).

CASE NOTES

Action Sufficient to Trigger Contested Case Provisions. — Petitioner's letter, requesting expungement of a record, and requesting an opportunity to meet with the administrative board, was sufficient to trigger the contested case provisions of this section, and respondent's subsequent denial of the request constituted agency action on a contested case which affected the substantive rights of petitioner. In re Sullivan, 112 N.C. App. 795, 436 S.E.2d 862 (1993).

Applied in McCollough v. North Carolina State Bd. of Dental Exmrs., 111 N.C. App. 186, 431 S.E.2d 816 (1993).

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992).

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

CASE NOTES

Cited in Bryant v. North Carolina State Bd. of Exmrs. of Elec. Contractors, 111 N.C. App. 875, 433 S.E.2d 814 (1993).

§ 150B-41. Evidence; stipulations; official notice.

CASE NOTES

Cited in Woodlief v. North Carolina State Bd. of Dental Exmrs., 104 N.C. App. 52, 407 S.E.2d 596 (1991).

§ 150B-42. Final agency decision; official record.

CASE NOTES

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992).

ARTICLE 4.

Judicial Review.

§ 150B-43. Right to judicial review.

CASE NOTES

- I. General Consideration.
- III. Contested Case.
- VII. Illustrative Cases.

I. GENERAL CONSIDERATION.

Failure to File Petition Under Another Section. — The language "not subject to review" in § 143-215.108(e) necessarily means the permit applicant or permittee may seek neither a contested case hearing before an Administrative Law Judge under § 143-215.108(e) nor judicial review under this section if the permittee or permit applicant has not filed a petition within 30 days of notification of the agency's decision. This language does not prohibit judicial review of a final agency decision in a contested case by an aggrieved third party where the permit or permit applicant has not challenged the agency decision. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

Allegation of Reason Not Required. — Nothing in this section, §§ 150B-46 or 150B-51 require that the party, in order to obtain judicial review pursuant to this section, must allege in its petition the particular reason under § 150B-51(b) which is the basis for reversing or modifying the agency decision. Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994).

Applied in Meyers v. Dep't of Human Resources, 105 N.C. App. 665, 415 S.E.2d 70 (1992).

Quoted in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993).

Cited in Johnson v. North Carolina DOT, 107 N.C. App. 63, 418 S.E.2d 700 (1992); Brooks v. BCF Piping, Inc., 109 N.C. App. 26, 426 S.E.2d 282 (1993); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); North Carolina DOT v. Davenport, 334 N.C. 428, 432 S.E.2d 303 (1993); House of Raeford Farms, Inc. v. State ex rel. Envtl. Mgt. Comm'n, 112 N.C. App. 228, 435 S.E.2d 106 (1993).

III. CONTESTED CASE.

A contested case hearing is distinguishable from a contested case. The phrase "contested case" extends beyond an adjudicatory hearing to include any agency proceeding, by whatever name called, wherein the legal rights, duties and privileges of a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

The result of a petitioner's ineffective attempts to file a petition for a contested case hearing was only a contested case. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Without the jurisdictional prereq-

uisite of a contested case hearing, a petitioner cannot utilize § 131E-188(b) to appeal to the Court of Appeals. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

VII. ILLUSTRATIVE CASES.

Environmental Impact Statement. — Department of Administration decision that an environmental impact statement was not required did not automatically mean that a permit would be issued by Department of Environmental Health and Natural Resources. Petitioners' action to challenge the decision did not become ripe until Department of Environmental Health and Natural Resources made its decision to issue the National Pollutant Discharge Elimination System permit to applicant. Because petitioners' claim was not ripe at the time of Department of Administration decision, they did not have the right to a contested case hearing. Citizens for Clean Indus., Inc. v. Lofton, 109 N.C. App. 229, 427 S.E.2d 120 (1993).

§ 150B-45. Procedure for seeking review; waiver.

Local Modification. — Durham: 1993, c. 227, s. 3; 1993 (Reg. Sess., 1994) c. 658, s. 1.2.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Under Article 3 of Chapter 150B of the General Statutes, judicial review of a final decision under that article is to be had in the Superior Court of Wake County or the superior court of the county where the person seeking review resides. Iredell Mem. Hosp. v. North Carolina Dep't of Human Resources, 103 N.C. App. 637, 406 S.E.2d 304 (1991).

The result of a petitioner's ineffective attempts to file a petition for a contested case hearing was only a contested case. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Without the jurisdictional prerequisite of a contested case hearing, a petitioner cannot utilize § 131E-188(b) to appeal to the Court of Appeals. Community Psychiatric Ctrs. v. North Carolina Dep't of Human Resources, 103 N.C. App. 514, 405 S.E.2d 769 (1991).

Applied in Meyers v. Dep't of Human Resources, 105 N.C. App. 665, 415 S.E.2d 70 (1992).

Quoted in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992).

Cited in Bashford v. North Carolina Licensing Bd., 107 N.C. App. 462, 420 S.E.2d 466 (1992); Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993); Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993); Ellis v. North Carolina Crime Victims Comp. Comm'n, 111 N.C. App. 157, 432 S.E.2d 160 (1993).

§ 150B-46. Contents of petition; copies served on all parties; intervention.

CASE NOTES

Allegation in Petition Not Required. — Nothing in §§ 150B-43, 150B-51 and this section require that the party, in order to obtain judicial review pursuant to § 150B-43, must allege in its petition the particular reason under § 150B-51(b) which is the basis for reversing or modifying the agency decision. Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994).

Quoted in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992).

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

CASE NOTES

Cited in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992); Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993).

§ 150B-49. New evidence.

CASE NOTES

There was competent evidence in the record, the affidavits to support the findings that the proposed evidence was cumulative and not materially different from that considered by the administrative agency when the decisions were made; therefore, the trial court did not err in denying petitioners' petition for remand to the Division of Environmental Management for the taking of additional evidence. Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994).

Petition Sufficiently Identified Exceptions. — Petitioner's petition for judicial review, which included the attached record of the Office of Administrative Hearings proceedings, sufficiently identified the exceptions petitioners had to the agency decision; therefore, the trial court erred in allowing petitioners' petition only for the purposes set forth in this section rather than reviewing the agency's decision under § 150B-51. Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994).

Cited in Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993).

§ 150B-50. Review by superior court without jury.

CASE NOTES

Stated in Huang v. North Carolina State Univ., 107 N.C. App. 710, 421 S.E.2d 812 (1992).

§ 150B-51. Scope of review.

Local Modification. — City of Durham: 1993 (Reg. Sess., 1994) c. 658, s. 1.2.

CASE NOTES

I. General Consideration.
IV. "Whole Record" Test.

I. GENERAL CONSIDERATION.

Superior Court Review of Agency Decision. — In its role as an appellate court, the superior court reviews the agency's decision, but is not allowed to replace the agency's judgment with its own when there are two reasonably conflicting views, even though the court could have reached a different result upon de novo review. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

Administrative agency decisions

may be reversed as arbitrary or capricious if they are patently in bad faith, or whimsical in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

Standards for Judicial Review. — The standards for judicial review set forth in this section, the whole record test, govern appeals from decisions of city or county boards of education. Warren v. New Hanover County Bd. of Educ., 104 N.C. App. 522, 410 S.E.2d 232 (1991).

When De Novo Review Permissible. —

Although the interpretation of a statute by an agency created to administer that statute is traditionally accorded some deference by appellate courts, those interpretations are not binding. Bashford v. North Carolina Licensing Bd., 107 N.C. App. 462, 420 S.E.2d 466 (1992).

Reasons for Not Adopting Recommendations. — Subsection (a) did not entitle petitioner to a review of whether the specific reasons the State Personnel Commission did not adopt the recommended decision were correct; only that they be stated. Oates v. North Carolina Dep't of Cor., 114 N.C. App. 597, 442 S.E.2d 542 (1994).

Review by Court of Appeals. —

The scope of review applied by an appellate court when reviewing a decision of a lower court is the same as in other civil cases. Thus, the appellate court's review is limited to determining whether the superior court committed any errors of law. Crowell Constructors, Inc. v. North Carolina Dep't of Env't, Health & Natural Resources, 107 N.C. App. 716, 421 S.E.2d 612 (1992), cert. denied, 333 N.C. 343, 426 S.E.2d 704 (1993).

Allegation of Particular Reason Not Required. — Nothing in §§ 150B-43, 150B-46, or this section require that the party, in order to obtain judicial review pursuant to § 150B-43, must allege in its petition the particular reason under this subsection (b) which is the basis for reversing or modifying the agency decision. Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994).

Applicable standard of judicial review, etc. —

While § 150B-2(1) expressly excepts local boards of education from the coverage of the Administrative Procedure Act, nonetheless the standards for judicial review set forth in this section apply to appeals from school boards. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

Appeal to Superior Court. — A teacher who is denied a promotion under the career ladder program may appeal to the superior court after exhausting his administrative remedies by appealing to the local board of education. Warren v. New Hanover County Bd. of Educ., 104 N.C. App. 522, 410 S.E.2d 232 (1991).

Rescission of Coastal Area Management Act Development Permit. — Trial court's rescission of Coastal Area Management Act Development permit was affirmed where there were a variety of ecological concerns, potential environmental damage, and interference with public access to and use of the affected waters, and the whole record showed that the only basis for issuing the permit was that it would make the public waters adjacent to the permittee's condominium project more convenient for the permittee's use. Ballance v. North Carolina Coastal Resources Comm'n, 108 N.C. App. 288, 423 S.E.2d 815 (1992), petition for reconsideration dismissed, 333 N.C. 789, 431 S.E.2d 21 (1993).

Exceptions Sufficiently Identified. — Petitioner's petition for judicial review, which included the record of the Office of Administrative Hearings proceedings, sufficiently identified the exceptions petitioners had to the agency decision; therefore, the trial court erred in allowing petitioners' petition only for the purposes set forth in § 150B-49 rather than reviewing the agency's decision under this section. Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 440 S.E.2d 334 (1994).

Error of Law. — An error of law, as that term is used in subdivision (b)(4), exists if a conclusion of law entered by the administrative agency is not supported by the findings of fact entered by the agency or if the conclusion of law does not support the decision of the agency. Brooks v. Ansco & Assocs., 114 N.C. App. 711, 443 S.E.2d 89 (1994).

Applied in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d

204 (1992); Teague v. Western Carolina Univ., 108 N.C. App. 689, 424 S.E.2d 684 (1993); In re E.I. DuPont de Nemours & Co., 109 N.C. App. 435, 428 S.E.2d 195 (1993); Ellis v. North Carolina Crime Victims Comp. Comm'n, 111 N.C. App. 157, 432 S.E.2d 160 (1993); Chesapeake Microfilm, Inc. v. North Carolina Dep't of Env't., Health & Natural Resources, 111 N.C. App. 737, 434 S.E.2d 218 (1993); King v. North Carolina Envtl. Mgt. Comm'n, 112 N.C. App. 813, 436 S.E.2d 865 (1993).

Quoted in Harding v. North Carolina Dep't of Cor., 106 N.C. App. 350, 416 S.E.2d 587 (1992); Best v. North Carolina State Bd. of Dental Exmrs., 108 N.C. App. 158, 423 S.E.2d 330 (1992); Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); Clay v. Employment Sec. Comm'n, 111 N.C. App. 599, 432 S.E.2d 873 (1993); House of Raeford Farms, Inc. v. State ex rel. Envtl. Mgt. Comm'n, 112 N.C. App. 228, 435 S.E.2d 106 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993); Beaufort County Schs. v. Roach, 114 N.C. App. 330, 443 S.E.2d 339 (1994).

Stated in Correll v. Division of Social Servs., 103 N.C. App. 562, 406 S.E.2d 633 (1991); Urback v. East Carolina Univ., 105 N.C. App. 605, 414 S.E.2d 100 (1992); Vass v. Board of Trustees, 108 N.C. App. 251, 423 S.E.2d 796 (1992).

Cited in Woodlief v. North Carolina State Bd. of Dental Exmrs., 104 N.C. App. 52, 407 S.E.2d 596 (1991); In re Freeman, 109 N.C. App. 100, 426 S.E.2d 100 (1993); Brooks v. BCF Piping, Inc., 109 N.C. App. 26, 426 S.E.2d 282 (1993); In re Huang, 110 N.C. App. 683, 431 S.E.2d 541 (1993); McCollough v. North Carolina State Bd. of Dental Exmrs., 111 N.C. App. 186, 431 S.E.2d 816 (1993); Davis v. North Carolina Dep't of Human Resources, 110 N.C. App. 730, 432 S.E.2d 132 (1993); Harding v. North Carolina Dep't of Cor., 334 N.C. 414, 432 S.E.2d 298 (1993); Cauthen v. North Carolina Dep't of Human Resources, 112 N.C. App. 238, 435 S.E.2d 81 (1993); Davenport v. North Carolina DOT, 3 F.3d 89 (4th Cir. 1993); Amanini v. N.C. Dep't of Human Resources, 114 N.C. App. 668, 443 S.E.2d 114 (1994).

IV. "WHOLE RECORD" TEST.

Whole Record Test Retained. — In accord with first paragraph in 1992 Cumulative Supplement. See Bashford v. North Carolina Licensing Bd., 107 N.C. App. 462, 420 S.E.2d 466 (1992).

"Whole Record" Test. — In reviewing an agency's decision, the superior court applies the "whole record" test, which requires the examination of all competent evidence to determine if the administrative agency's decision is supported by substantial evidence. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

The whole record test is applied when determining whether a decision is arbitrary and capricious. Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).

The applicable scope of review is the "whole record" test. When the test is applied, the reviewing court is required to take into account all of the evidence, including that which supports the findings and contradictory evidence. Crowell Constructors, Inc. v. North Carolina Dep't of Env't, Health & Natural Resources, 107 N.C. App. 716, 421 S.E.2d 612 (1992), cert. denied, 333 N.C. 343, 426 S.E.2d 704 (1993).

§ 150B-52. Appeal; stay of court's decision.

CASE NOTES

Scope of Appellate Review. — Pursuant to this section, court review of a trial court's consideration of a final agency decision is to determine whether the trial court committed any errors of law which would be based upon its failure to properly apply the review standard set forth in § 150B-51. Sherrod v. North Carolina Dep't of Human Resources, 105 N.C. App. 526, 414 S.E.2d 50 (1992).

Examination for Error — A Twofold Task. — The appellate court should examine the trial court's order for error of law, which has been described as a twofold task: (1) determining whether the trial court exercised the appropriate scope of review and, if appropriate, (2) deciding whether the court did so properly. Amanini v. N.C. Dep't of Human Resources, 114 N.C. App. 668, 443 S.E.2d 114 (1994).

Applied in Professional Food Servs. Mgt., Inc. v. North Carolina Dep't of Admin., 109 N.C. App. 265, 426 S.E.2d 447 (1993); In re E.I. DuPont de Nemours & Co., 109 N.C. App. 435, 428 S.E.2d 195 (1993).

Cited in Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991); Best v. North Carolina State Bd. of Dental Exmrs., 108 N.C. App. 158, 423 S.E.2d 330 (1992); In re Huang, 110 N.C. App. 683, 431 S.E.2d 541 (1993); In re McCrary, 112 N.C. App. 161, 435 S.E.2d 359 (1993).

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Clay (office of coroner abolished): 1993, c. 75, s. 1; Greene (office of coroner abolished): 1985, c. 165; Halifax (office of coroner abolished): 1993, c. 36; McDowell (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 1; Moore (office of coroner abolished effective July 1, 1984): 1983, c. 36; New Hanover (office of coroner abolished, effective December 1, 1986): 1985, c. 236; Rowan (office of coroner abolished): 1985, c. 40; Scotland (office of coroner abolished): 1993, c. 272, s. 1 (effective upon the expiration of the current term of office); Yancey (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 4.

For additional local modifications to this section, see the main pamphlet.

Chapter 153A.

Counties.

Article 2.

Corporate Powers.

Sec.

153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

Article 3.

Boundaries.

153A-19. Establishing and naming townships.

Article 4.

Form of Government.

Part 3. Organization and Procedures of the Board of Commissioners.

153A-39. Selection of chairman and vice-chairman; powers and duties.

Article 5.

Administration.

Part 1. Organization and Reorganization of County Government.

153A-77.1. Single portal of entry.

Part 4. Personnel.

153A-98. Privacy of employee personnel records.

153A-99. County employee political activity.

Article 6.

Delegation and Exercise of the General Police Power.

153A-123. Enforcement of ordinances.

153A-136. Regulation of solid wastes.

Article 7.

Taxation.

153A-148.1. Disclosure of certain information prohibited.

153A-149. Property taxes; authorized purposes; rate limitation.

153A-155, 153A-156. [Reserved.]

Article 8.

County Property.

Part 1. Acquisition of Property.

Sec.

153A-157. Power to acquire property in certain counties.

153A-158. Power to acquire property in other counties.

153A-158.1. School property in certain counties; construction and other improvements; transfers.

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

153A-224. Supervision of local confinement facilities.

153A-225. Medical care of prisoners.

153A-226. Sanitation and food.

Part 3. Satellite Jail/Work Release Units.

153A-230.3. Basic requirements for satellite jail/work release units.

Article 12.

Roads and Bridges.

153A-238. Public road defined for counties.

153A-239. [Repealed.]

153A-239.1. Naming roads and assigning street numbers in unincorporated areas for counties.

153A-240. [Repealed.]

Article 15.

Public Enterprises.

Part 1. General Provisions.

153A-274. Public enterprise defined.

153A-275. Authority to operate public enterprises.

153A-277. Authority to fix and enforce rates.

Part 2. Special Provisions for Water and Sewer Services.

153A-285. [Repealed.]

153A-287. [Repealed.]

Part 3. Special Provisions for Solid Waste Collection and Disposal.

Sec.
153A-294. Solid waste defined.

Part 4. Long Term Contracts for Disposal of Solid Waste.

153A-299.1 through 153A-299.6. [Repealed.]

Article 16.

County Service Districts; County Research and Production Service Districts.

Part 1. County Service Districts.

153A-301. Purposes for which districts may be established.
153A-309.2. Rate limitation in certain districts.

Article 18.

Planning and Regulation of Development.

Part 2. Subdivision Regulation.

153A-334. (Effective October 1, 1994 — See editor's note) Penalties for transferring lots in unapproved subdivisions.

Part 3. Zoning.

153A-343. Method of procedure.

Part 4. Building Inspection.

Sec.
153A-353. Joint inspection department; other arrangements.
153A-355. Conflicts of interest.
153A-356. (Effective October 1, 1994 — See editor's note) Failure to perform duties.
153A-357. Permits.
153A-361. (Effective October 1, 1994 — See editor's note) Stop orders.
153A-363. (Effective October 1, 1994 — See editor's note) Certificates of compliance.
153A-367. (Effective October 1, 1994 — See editor's note) Removing notice from condemned building.
153A-371. (Effective October 1, 1994 — See editor's note) Failure to comply with order.

Article 22.

Regional Solid Waste Management Authorities.

153A-421. Definitions; applicability; creation of authorities.
153A-430. Compliance with other law.

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-4. Broad construction.

CASE NOTES

Amendment to county zoning ordinance constituted a valid legislative prerogative to change the sanitary landfill use from a "special use permit" category to a "use by right under prescribed conditions" category and that section of the county zoning ordinance, which allowed county zoning administrator to approve the county's permit application for the siting of a landfill, was constitutional and lawful on its face. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

ARTICLE 2.

Corporate Powers.

§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

(a) Notwithstanding the provisions of G.S. 153A-159, Article 11 of Chapter 160A of the General Statutes, G.S. 130-130, Chapter 40 of the General Statutes, or any other general law or local act conferring the power of eminent domain, before final judgment may be entered in any action of condemnation initiated (or in the case of Article 11 of Chapter 160A, before a final condemnation resolution is adopted) by a county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county, whereby the condemnor seeks to acquire property located in the other county, the condemnor shall furnish proof that the county board of commissioners of the county where the land is located has consented to the taking.

(b) Notwithstanding the provisions of G.S. 153A-158, Chapter 160A of the General Statutes, Article 12 of Chapter 130 of the General Statutes, or any other general law or local act conferring the power to acquire real property, before any county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county acquires any real property located in the other county by exchange, purchase or lease, it must have the approval of the county board of commissioners of the county where the land is located.

(c) This section applies to Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Caldwell, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Davie, Duplin, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Montgomery, New Hanover, Onslow, Pender, Person, Robeson, Rockingham, Rowan, Sampson, Scotland, Stokes, Swain, Transylvania, Union, Vance, Wake, Warren, and Wilkes counties only. This section does not apply as to any:

(1) Condemnation; or

(2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city. (1981, c. 134, ss. 1, 2; c. 270, ss. 1, 2; c. 283, ss. 1-3; c. 459, s. 1; c. 941, s. 1; 1981 (Reg. Sess., 1982), c. 1150, s. 1; 1989 (Reg. Sess., 1990), c. 973, s. 1; c. 1061, s. 1; 1991, c. 615, s. 3; 1991 (Reg. Sess., 1992), c. 790, s. 1; 1993 (Reg. Sess., 1994), c. 624, s. 1; c. 628, s. 1.)

Effect of Amendments. —

The 1991 (Reg. Sess., 1992) amendment, effective June 29, 1992, inserted "New Hanover, Pender" in subsection (c).

The 1993 (Reg. Sess., 1994) amendment by c. 624, s. 1, effective July 1, 1994, in subsection (c) added "Catawba," "Cumberland," "Duplin," "Durham," "Gaston," "Graham," "Hoke," "Iredell," "Lincoln," "McDowell," "Mecklenburg," "Robeson," "Scotland," and "Wake," and added the last sentence of the subsection.

The 1993 (Reg. Sess., 1994) amendment by c. 628, s. 1, effective July 1, 1994, added "Onslow" in subsection (c).

ARTICLE 3.

Boundaries.

§ 153A-19. Establishing and naming townships.

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, 1988, and ending January 2, 1990, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides that the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, 1988, and ending January 2, 1990.

(c) The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township boundaries and changes in those boundaries to the United States Bureau of the Census in the Boundary and Annexations Survey. In responding to the surveys, each county manager or, if there is no manager, chairman of the board of commissioners shall consult with the county board of elections and other appropriate local agencies as to the location of township boundaries, so that the Census Bureau's mapping of township boundaries does not disagree with any county voting precinct boundaries that may be based on township boundaries. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1; 1987, c. 715, s. 1; c. 879, s. 2; 1993, c. 352, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 15, 1993, in subsection (c), in the first sentence, substituted "The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township" for "Township", and deleted "shall be reported" preceding "to the United States", in the second sentence, inserted "manager or, if there is no manager, chairman of the board of the commissioners" and added at the end "so that the Census Bureau's mapping of township boundaries does not disagree with any county voting precinct boundaries that may be based on township boundaries".

§ 153A-22. Redefining electoral district boundaries.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, ss. 4-5.1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

Editor's Note. — Session Laws 1993, c. 521, s. 2 provides: "Section 1 of this act supersedes any previous action under G.S. 153A-22." Section 1 provides: "Chapter 136, Session Laws of 1991, [relating to expanding and redistricting the Guilford County Board of Commissioners] is reenacted."

ARTICLE 4.

Form of Government.

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-39. Selection of chairman and vice-chairman; powers and duties.

On:

(1) The first Monday in December of each even-numbered year; and

(2) Its first regular meeting in December of each odd-numbered year,

the board of commissioners shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people or otherwise designated by law. The board shall also at that time choose a vice-chairman to act in the absence or disability of the chairman. If the chairman and the vice-chairman are both absent from a meeting of the board, the members present may choose a temporary chairman.

The chairman is the presiding officer of the board of commissioners. Unless excused by rule of the board, the presiding officer has the duty to vote on any question before the board, but he has no right to break a tie vote in which he participated. (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1; 1993, c. 95, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 1, 1993, in the introductory language, substituted "On" for "As its"; added subdivision (1); added the subdivision (2) designation; and in subdivision (2) added "Its" at the beginning and inserted "odd-numbered."

§ 153A-44. Members excused from voting.

CASE NOTES

Cited in County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 153A-45. Adoption of ordinances.

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures.

Local Modification. — (As to Part 4 of Article 4) Dare: 1991, Ex. Sess., c. 2, s. 4 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

§ 153A-60. Initiation of alterations by resolution.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, s. 1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

§ 153A-61. Submission of proposition to voters; form of ballot.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, s. 2 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

§ 153A-64. Filing results of election.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, s. 3 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

ARTICLE 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government.

Cross References. — As to prevalence of Article 7 of Chapter 115C (§ 115C-65 et seq.) over subdivision (4) of this section, see § 115C-68.3.

§ 153A-77.1. Single portal of entry.

A county may develop for human services a single portal of entry, a consolidated case management system, and a common data base; provided that if the county is part of a district health department or a multi-county area mental health, developmental disabilities, and substance abuse authority, such action must be approved by the district board of health or the area mental health, developmental disabilities, and substance abuse board to affect any matter within the jurisdiction of that board. Nothing in this section shall be construed to abrogate a patient's right to confidentiality as provided by law. (1987, c. 422, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 47.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 24, 1992, substituted "developmental disabilities" for "mental retardation" in two places in the first sentence.

Part 4. Personnel.

§ 153A-98. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The county manager, with concurrence of the board of county commissioners, or, in counties not having a manager, the board of county commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the administration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the county's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The board of county commissioners may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the county as long as each personnel file so examined is retained.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) **(Effective October 1, 1994 — See editor's note)** A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) **(Effective October 1, 1994 — See editor's note)** Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1; 1981, c. 926, ss. 1, 5-8; 1993, c. 539, ss. 1059, 1060; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsections (e) and (f) inserted "Class 3" preceding "misdemeanor" and inserted "only" following "and upon conviction shall".

CASE NOTES

Applications for position of county sherriff sought by board of county commissioners were governed by the provisions of this section rather than the Public Records Law and, therefore were not subject to disclosure to the public. Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

§ 153A-99. County employee political activity.

(a) Purpose. The purpose of this section is to ensure that county employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every county employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) "County employee" or "employee" means any person employed by a county or any department or program thereof that is supported, in whole or in part, by county funds;

(2) "On duty" means that time period when an employee is engaged in the duties of his or her employment; and

(3) "Workplace" means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use county funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, local ordinance, resolution, or policy, this section prevails to the extent of the conflict. (1991, c. 619, s. 1; 1993, c. 298, s. 1.)

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, in subsection (a), in the first paragraph, inserted "to ensure that employees are not restricted from political activities while off duty" following "their job duties," and, in the third sentence of the second paragraph, substituted "shall not be" for "are not" following "Employees" and "shall" for "are" following "nor" and inserted "be" preceding "restricted from attending"; and substituted present subsection (f) for former subsection (f) which read: "Nothing in this section shall be construed to prohibit a county from adopting or enforcing personnel policies not in conflict with the rights of employees under the Constitution and laws of the State or the Constitution and laws of the United States of America."

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-101. Board of commissioners to direct fiscal policy of the county.

CASE NOTES

Cited in Leete v. County of Warren, 114 N.C. App. 755, 443 S.E.2d 98 (1994).

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

CASE NOTES

When the most that can be said against an ordinance is that it is fairly debatable whether it is an unreasonable, arbitrary or unequal exercise of power, the courts will not interfere. County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992).

Regulation of Junkyards. — Requirements of ordinance which imposed expensive requirements on junkyard owners which could prohibit them from continuing to use their property in one manner did not exceed the boundaries of the board's discretion and, therefore, the ordinance would be left undisturbed. County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992).

§ 153A-123. Enforcement of ordinances.

(a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.

(b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(c1) An ordinance may provide for the recovery of a civil penalty by the county for violation of the fire prevention code of the State Building Code as authorized under G.S. 143-139.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the General Court of Justice has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and materialman's lien, for the costs of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense. (1973, c. 822, s. 1; 1985, c. 764, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 329, s. 5.)

Effect of Amendments. — The 1993 amendment, effective July 13, 1993, and applicable to violations committed on or after that date, added subsection (c1).

§ 153A-133. Noise regulation.

Local Modification. — Rockingham: 1991 (Reg. Sess., 1992), c. 996, s. 1. For additional local modifications to this section, see the main pamphlet.

§ 153A-136. Regulation of solid wastes.

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment, Health, and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).
(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.
(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.
(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1955, c. 1050; 1957, cc. 120, 376; 1961, c. 40; c. 514, s. 1; cc. 711, 803; c. 806, s. 1; 1965, c. 452; 1967, cc. 34, 90; c. 183, s. 1; cc. 304, 339; c. 495, s. 4; 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452; c. 1003, s. 4; 1973, c. 476, s. 128; c. 822, s. 1; 1989 (Reg. Sess., 1990), c. 1009, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 1; 1993, c. 165, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which amended this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 1013, s. 9 provides: "G.S. 153A-136(c), as enacted by Section 1 of this act, and G.S. 160A-325(a), as enacted by Section 3 of this act, shall not apply to the selection or approval of a site for a new sanitary landfill if, prior to the effective date of this act:

"(1) The site was selected or approved by the board of commissioners of a county or the governing board of a city;

"(2) A public hearing on the selection or approval of the site has been held;

"(3) A long-term contract was approved by the Department of Environment, Health, and Natural Resources under Part 4 of Article 15 of Chapter 153A of the General Statutes; or

"(4) An application for a permit for a sanitary landfill to be located on the site has been submitted to the Department of Environment, Health and Natural Resources." The act became effective July 22, 1992.

Session Laws 1993, c. 165, which amended this section, in s. 3 provides that this amendment is effective upon ratification and does not apply to any contracts in existence at that time or to any extensions or renewals thereof. The act was ratified on June 16, 1993.

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 22, 1992, substituted "30 years" for "seven years" in the second sentence of subdivision (a)(3), and added subsections (c) and (d).

The 1993 amendment, effective June 16, 1993, in subdivision (a)(5) deleted "from solid waste" following "materials" and deleted "the" following "collection of"; and in subdivision (a)(6), in the first sentence, substituted "by requiring separation of designated materials by the owner or occupant of the property prior to disposal" for "which has been approved by the boards of commissioners"; and added the second, third and fourth sentences in subdivision (a)(6). As to the applicability of this amendment, see the Editor's Note.

ARTICLE 7.

Taxation.

§ 153A-148.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. — Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) To sort, process, or deliver tax information on behalf of the county, as necessary to administer a tax.

(b) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 33; 1994, Ex. Sess., c. 14, s. 66.)

Editor's Note. — Session Laws 1993, c. 485, s. 40 made this section effective upon ratification. The act was ratified July 23, 1993.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and may be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000), imprisoned for up to two years, or both" in subsection (b).

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.

(2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.

(3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.

(4) Elections. — To provide for all federal, State, district and county elections.

(5) Jails. — To provide for the operation of a jail and other local confinement facilities.

(6) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.

(8) Social Services. — To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.

(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.

(3) Air Pollution. — To maintain and administer air pollution control programs.

(4) Airports. — To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. — To provide animal protection and control programs.

(6a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.

(6b) Auditoriums, coliseums, and convention and civic centers. — To provide public auditoriums, coliseums, and convention and civic centers.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Preparedness. — To provide for civil preparedness programs.

(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-12.

(11) Fire Protection. — To provide fire protection services and fire prevention programs.

(12) Forest Protection. — To provide forest management and protection programs.

(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the county or district health department.

(14) Historic Preservation. — To undertake historic preservation programs and projects.

(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, or to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

(15a) Housing Rehabilitation. — To provide for housing rehabilitation programs authorized by G.S. 153A-376, including personnel costs related to the planning and administration of these programs. This subdivision applies only to counties with a population of 400,000 or more, according to the most recent decennial federal census.

(16) Human Relations. — To undertake human relations programs.

(16a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.

(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. — To establish and maintain public libraries.

(20) Mapping. — To provide for mapping the lands of the county.

(21) Medical Examiner. — To provide for the county medical examiner or coroner.

(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, developmental disabilities, and substance abuse authority.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.

(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.

(26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.

(27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation. This subdivision does not authorize a county to provide public roads in the county in violation of G.S. 136-51.

(27a) Railway Corridor Preservation. — To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.

(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.

(28a) Roads. — To provide for the maintenance of county roads as authorized by G.S. 153A-301(d).

(29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(31a) Stormwater. — To provide structural and natural stormwater and drainage systems of all types.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall .... County be authorized to levy annually a property tax at a rate not in excess of .... cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of ....?

(2) Shall .... County be authorized to levy annually a property tax at a rate not in excess of that which will produce $.......... for the purpose of ....?

(3) Shall .... County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of ....?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to .... County be increased from ...... on the one hundred dollars ($100.00) value of property subject to taxation to .... on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1; 1983, c. 511, ss. 1, 2; 1985, c. 589, s. 57; 1987, c. 45, s. 2; c. 697, s. 2; 1989, c. 600, s. 5; c. 625, s. 25; c. 643, s. 1; 1989 (Reg. Sess., 1990), c. 1005, ss. 3-5; 1991 (Reg. Sess., 1992), c. 764, s. 1; c. 896, s. 1; 1993, c. 378, s. 2.)

Effect of Amendments. — Session Laws 1991 (Reg. Sess., 1992), c. 764, s. 1, effective June 15, 1992, in subdivision (c)(15a), in the first sentence inserted "housing rehabilitation programs authorized by G.S. 153A-376, including", inserted "the" preceding "planning", and substituted "these programs" for "housing rehabilitation programs authorized by G.S. 153A-376", and substituted "applies only" for "only applies" in the second sentence.

Session Laws 1991 (Reg. Sess.,1992), c. 896, s.1, effective July 8, 1992, in subsection (c) redesignated former subdivision (27) as subdivision (26a), and added present subdivision (27).

The 1993 amendment, effective July 18, 1993, added subdivision (c)(28a).

§§ 153A-155, 153A-156: Reserved for future codification purposes.

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-157. Power to acquire property in certain counties.

(a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any other lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

The county shall use its authority under this section to acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) This section applies to Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Duplin, Forsyth, Franklin, Harnett, Haywood, Iredell, Johnston, Lee, Macon, Nash, Orange, Pasquotank, Pender, Richmond, Rowan, Sampson, and Stanly Counties. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1991, cc. 120, 533; 1991 (Reg. Sess., 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1; c. 1001, s. 1; 1993 (Reg. Sess., 1994) c. 614, s. 1; c. 611, s. 1; c. 612, s. 1; c. 614, s. 1; c. 622, s. 1; c. 623, s. 1; c. 642, s. 3(a); c. 655, s. 1.)

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; 1993 (Reg. Sess., 1994), c. 612, s. 1.1; Cabarrus: 1985, c. 194, s. 3; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 1.1; Columbus: 1981, c. 270; Forsyth: 1993 (Reg. Sess., 1994), c. 642, s. 3(d); Franklin: 1981, c. 941; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; c. 623, s. 1.1; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 1.1; Johnston: 1981, c. 459; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; c. 623, s. 1.1; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 1.1; Nash: 1993 (Reg. Sess., 1994), c. 642, s. 3(d); Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3(d); Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 1.1; Pender: 1981, c. 283; Richmond: 1991, c. 533, s. 1; 1993 (Reg. Sess., 1994), c. 614, s. 2; Sampson: 1981, c. 459; 1991, c. 533, s. 1; 1993 (Reg. Sess., 1994), c. 614.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 885, s. 1, effective July 10, 1990, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 832, s. 1, effective July 2, 1992; c. 848, s. 1, effective July 6, 1992; c. 865, s. 1, effective July 7, 1992; and c. 1001, s. 1, effective July 21, 1992, has been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1991, c. 533, which added Sampson and Richmond Counties, expires January 1, 1995; however, Session Laws 1993 (Reg. Sess., 1994), c. 614, s. 1 repealed the expiration date of January 1, 1995 established for Sampson and

Richmond Counties by Session Laws 1991, c. 533.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 612, s. 1, effective July 1, 1994, added "Brunswick" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 611, s. 1, effective July 1, 1994, added "Macon" and "Haywood" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 614, s. 1, effective July 1, 1994, repealed the expiration date of January 1, 1995, established for Richmond and Sampson Counties by Session Laws 1991, c. 553.

Session Laws 1993 (Reg. Sess., 1994), c. 622, s. 1, effective July 1, 1994, added "Ashe," "Avery," "Harnett," and "Lee" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 623, s. 1, effective July 1, 1994, added "Ashe," "Avery," "Harnett," and "Lee" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 642, s. 3(a), effective July 1, 1994, added "Forsyth,"and "Nash, Orange" in subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 655, s. 1, effective July 1, 1994, in subsection (b) inserted "Chowan" and "Pasquotank."

§ 153A-158. Power to acquire property in other counties.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21.)

Local Modification. — Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; Cabarrus: 1985, c. 194, s. 3; Caswell: 1981, c. 941; Columbus: 1981, c. 270; Franklin: 1981, c. 941; Granville: 1981, c. 941; Johnston: 1981, c. 459; Pender: 1981, c. 283; Person: 1981, c. 941; Sampson: 1993 (Reg. Sess., 1994), c. 613, s. 1; Union: 1983, c. 150; Vance: 1981, c. 941; Wake: 1985, c. 337; Warren: 1981, c. 941; Watauga: 1989, c. 487, s. 1.

Local Modification. —

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — This section and Local Modification notes have been set out above to reflect changes due to the codification of Session Laws 1989 (Reg. Sess., 1990), c. 885, ss. 1, 2, and Session Laws 1991 (Reg. Sess., 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1, and c. 1001, s. 1.

§ 153A-158.1. School property in certain counties; construction and other improvements; transfers.

(a) Reserved for future codification.

(b) A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. This subsection applies only to Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond, and Sampson Counties and to local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties.

(c) Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may lease or sell any of its property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards. This subsection applies only to Ashe, Avery, Brunswick, Cabarrus, Carteret, Chowan, Duplin, Forsyth, Harnett, Haywood, Iredell, Lee, Macon, Nash, Orange, Pasquotank, Rowan, Sampson, and Stanley Counties and to local boards of education for school administrative units in or for these counties. This subsection applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.

(d) Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are located. This subsection applies only to Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Lee, Nash, Orange, Pasquotank, and Sampson Counties and to local boards of education for school administrative units in or for those counties. (Session Laws 1991, c. 1001, s. 2; Session Laws 1993 (Reg. Sess., 1994), c. 611, ss. 1.1, 2; c. 612, ss. 1.1-3; c. 614, ss. 2-4; c. 622, ss. 1.1-3; c. 623, ss. 1.1-3; c. 642, ss. 3(c), (d); c. 655, ss. 1.1-3.)

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to §153A-157 have been enacted as this section.

Local Modification. — Forsyth: 1993 (Reg. Sess., 1994), c. 642, s. 3(b); Nash: 1993 (Reg. Sess., 1994), c. 642, s. 3(b); Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3(b).

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

Local Modification. — Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1, 2; Lee: 1987 (Reg. Sess., 1988), c. 933; Lincoln: 1989, c. 411, s. 1; McDowell: 1987 (Reg. Sess., 1988), c. 909; Pender: 1989, c. 503, s. 1; 1993, c. 52, s. 1; Polk: 1989, c. 375, s. 1; Transylvania: 1989, c. 4; Tyrrell: 1987, c. 9.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 9.

Special Assessments.

§ 153A-192. Hearing on preliminary resolution; assessment resolution.

CASE NOTES

Cited in Leete v. County of Warren, 114 N.C. App. 755, 443 S.E.2d 98 (1994).

§ 153A-205. Improvements to subdivision and residential streets.

Local Modification. — Hyde: 1991 (Reg. Sess., 1992), c. 824.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-224. Supervision of local confinement facilities.

(a) No person may be confined in a local confinement facility unless custodial personnel are present and available to provide continuous supervision in order that custody will be secure and that, in event of emergency, such as fire, illness, assaults by other prisoners, or otherwise, the prisoners can be protected. These personnel shall supervise prisoners closely enough to maintain safe custody and control and to be at all times informed of the prisoners' general health and emergency medical needs.

(b) In a medical emergency, the custodial personnel shall secure emergency medical care from a licensed physician according to the unit's plan for medical care. If a physician designated in the plan is not available, the personnel shall secure medical services from any licensed physician who is available. The unit operating the facility shall pay the cost of emergency medical services unless the inmate has third-party insurance, in which case the third-party insurer shall be the initial payor and the medical provider shall bill the third-party insurer. The county shall only be liable for costs not reimbursed by the third-party insurer, in which event the county may recover from the inmate the cost of the non-reimbursed medical services.

(c) **(Effective October 1, 1994 — See editor's note)** If a person violates any provision of this section, he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 822, s. 1; 1993, c. 510, s. 1; c. 539, s. 1061; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to liability of county for emergency medical services for prisoners working pursuant to § 162-58, see § 162-61.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1993, c. 510, s.1, effective July 24, 1993, in subsection (b) added at the end of the third sentence "unless the inmate has third-party insurance, in which case the third-party insurer shall be the initial payor and the medical provider shall bill the third-party insurer" and added the last sentence.

Session Laws 1993, c. 539, s. 1061, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (c).

CASE NOTES

Payment of Expenses Under Insurance Policy. — Since medical payments made by county were mandated by statute, paying jail inmate's medical expenses was not voluntary, and therefore, payment under insurance policy was not barred for this reason. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

County's claim not barred by policy exclusion. — Although insurance company argued that since county had a contract with hospital to provide medical care for prison inmates, policy exclusion barred coverage of payments made under that contract, since the county's liability for inmate's medical expenses was due not to its contract with the hospital, but rather to the statutory requirement that county prisons implement a plan for providing medical care to inmates, the county's claim was not barred by this policy exclusion. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

Cited in Slade v. Vernon, 110 N.C. App. 422, 429 S.E.2d 744 (1993).

§ 153A-225. Medical care of prisoners.

(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;
(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;
(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Environment, Health, and Natural Resources. The report shall be made on forms developed and distributed by the Department of Environment, Health, and Natural Resources.

(c) **(Effective October 1, 1994 — See editor's note)** If a person violates any provision of this section (including the requirements regarding G.S. 130-97 and 130-121), he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3; 1989, c. 727, s. 204; 1991, c. 237, s. 2; 1993, c. 539, s. 1062; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (c).

CASE NOTES

Payment of Expenses Under Insurance Policy. — Since medical payments made by county were mandated by statute, paying jail inmate's medical expenses was not voluntary, and therefore, payment under insurance policy was not barred for this reason. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

County's Claim Not Barred by Policy Exclusion. — Although insurance company argued that since county had a contract with hospital to provide medical care for prison inmates, policy exclusion barred coverage of payments made under that contract, since the county's liability for inmate's medical expenses was due not to its contract with the hospital, but rather to the statutory requirement that county prisons implement a plan for providing medical care to inmates, the county's claim was not barred by this policy exclusion. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

§ 153A-226. Sanitation and food.

(a) The Commission for Health Services shall adopt rules governing the sanitation of local confinement facilities, including the kitchens and other places where food is prepared for prisoners. The rules shall address, but not be limited to, the cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other facilities; adequacy of lighting, water, lavatory facilities, bedding, food protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; and any other item necessary to the health of the prisoners or the public.

(b) The Commission for Health Services shall prepare a score sheet to be used by local health departments in inspecting local confinement facilities. The local health departments shall inspect local confinement facilities as often as may be required by the Commission for Health Services. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local health department. The health department shall promptly inspect the facility. After making its inspection, the local health department shall forward a copy of its report to the Department of Human Resources and to the unit operating the facility, on forms prepared by the Department of Environment, Health, and Natural Resources. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223. (1967, c. 581, s. 2; 1973, c. 476, s. 128; c. 822, s. 1; 1989, c. 727, s. 205; 1993, c. 262, s. 5.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in subsection (a), in the first sentence deleted "and regulations" following "rules", in the second sentence substituted "shall address, but not be limited to, the" for "and regulations shall cover such matters as", inserted "ventilation equipment" following "utensils", deleted "ventilation" following "adequacy of lighting" and deleted "adequacy of diet" following "and serving"; in subsection (b), in the first sentence, substituted "local health" for "sanitarians of local or district health", in the second sentence substituted "local health departments" for "sanitarians", at the end of the third sentence, deleted "or district" preceding "health department", in the fourth sentence deleted "cause a sanitarian to" following "shall promptly", in the fifth sentence substituted "its" for "his" in two places and substituted "local health department" for "sanitarian".

Part 3. Satellite Jail/Work Release Units.

§ 153A-230.3. Basic requirements for satellite jail/work release units.

(a) Eligibility for Unit. — The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

(1) Any convicted misdemeanant who:
   a. Receives an active sentence in the county or group of counties operating the unit,
   b. Is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related to upkeep and operation of the unit or by assignment to community service work, and
   c. Consents to placement in the unit under these conditions,

   shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.

(2) The County shall offer work release programs to both male and female misdemeanants, through local facilities for both, or through a contractual agreement with another entity for either, provided that such arrangement is in reasonable proximity to the misdemeanant's workplace.

(3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the misdemeanant meets the requirements of subdivision (1), then the custodian of the local confinement facility may transfer the misdemeanant to the unit. If at any time either prior to or after placement of an inmate into the unit the Sheriff determines that there is an indication of violence, unsuitable behavior, or other threat to the public that could make the prisoner unsuitable for the unit, the Sheriff may place the prisoner in the county jail.

(4) The Sheriff may accept work release misdemeanants from other counties provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(5) The Sheriff may accept work release misdemeanants or felons from the Department of Correction provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(a1) Non-eligible for unit. — If the sentencing judge finds that the misdemeanant does not meet the eligibility criteria set forth in G.S. 135A-230.3(a)(1)b, but is otherwise eligible for placement in the unit, then the Sheriff may transfer the misdemeanant from the local confinement facility to the unit if the misdemeanant meets the eligibility criteria at a later date. The Sheriff may also transfer prisoners who were placed in the unit pursuant to G.S. 148-32.1(b) to the local confinement facility when space becomes available.

(b) Operation of Satellite Jail/Work Release Unit. — A county or group of counties operating a satellite jail/work release unit shall comply with the following requirements concerning operation of the unit:

(1) The county shall make every effort to ensure that at least eighty percent (80%) of the unit occupants shall be employed and on work release, and that the remainder shall earn their keep by working at the unit on maintenance and other jobs related to the upkeep and operation of the unit or by assignment to community service work, and that alcohol and drug rehabilitation be available through community resources.

(2) The county shall require the occupants to give their earnings, less standard payroll deduction required by law and premiums for group health insurance coverage, to the Sheriff. The county may charge a per day charge from those occupants who are employed or otherwise able to pay from other resources available to the occupants. The per day charge shall be calculated based on the following formula: The charge shall be either the amount that the Department of Correction deducts from a prisoner's work-release earnings to pay for the cost of the prisoner's keep or fifty percent (50%) of the occupant's net weekly income, whichever is greater, but in no event may the per day charge exceed an amount that is twice the amount that the Department of Correction pays each local confinement facility for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical expenses. The per day charge may be adjusted on an individual basis where restitution and/or child support has been ordered, or where the occupant's salary or resources are insufficient to pay the charge.

The county also shall accumulate a reasonable sum from the earnings of the occupant to be returned to him when he is released from the unit. The county also shall follow the guidelines established for the Department of Correction in G.S. 148-33.1(f) for determining the amount and order of disbursements from the occupant's earnings.

(3) Any and all proceeds from daily fees shall belong to the county's General Fund to aid in offsetting the operation and maintenance of the satellite unit.

(4) The unit shall be operated on a full-time basis, i.e., seven days/nights a week, but weekend leave may be granted by

the Sheriff. In granting weekend leave, the Sheriff shall follow the policies and procedures of the Department of Correction for granting weekend leave for Level 3 minimum custody inmates.

(5) Earned time shall be applied to these county prisoners in the same manner as prescribed in G.S. 15A-1340.20 and G.S. 148-13 for State prisoners.

(6) The Sheriff shall maintain complete and accurate records on each inmate. These records shall contain the same information as required for State prisoners that are housed in county local confinement facilities. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 4, 5; 1989, c. 761, ss. 4, 7; 1993 (Reg. Sess., 1994), c. 767, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in subdivision (b)(5) substituted "Earned" for "Good time and gain," and substituted "G.S. 15A-1340.20" for "G.S. 15A-1340.7."

ARTICLE 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services.

Local Modification. — (As to Article 11) Halifax: 1993, c. 316, s. 1.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 12.

Roads and Bridges.

§ 153A-238. Public road defined for counties.

(a) In this Article "public road" or "road" means any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public or in which the public has acquired rights by prescription, without regard to whether it is open for travel, except that in G.S. 153A-239.1, the word "road" means both private roads and public roads.

(b) Repealed by Session Laws 1993, c. 62, s. 1, effective May 24, 1993. (1979, 2nd Sess., c. 1319, s. 1; 1981, c. 568; 1983, cc. 98, 299; 1987 (Reg. Sess., 1988), cc. 900, 906; 1989, c. 335, s. 1; 1989 (Reg. Sess., 1990), cc. 836, 854, 911; 1991, c. 9, s. 1; 1991 (Reg. Sess., 1992), c. 778, s. 1; c. 849, ss. 1, 2.1; c. 936, s. 1; 1993, c. 62, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1319, s. 1, as amended by Session Laws 1981, c. 568; 1983, cc. 98 and 299; 1987 (Reg. Sess., 1988), cc. 900 and 906; 1989, c. 335, s. 1; and 1989 (Reg. Sess., 1990), c. 836, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 62, amended this section to make it statewide in application and repealed former § 153A-239, which formerly applied to those counties to which this section did not apply.

Effect of Amendments. — Session Laws 1991 (Reg. Sess., 1992), c. 778, s. 1, effective June 24, 1992, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 849, s. 2.1, effective July 6, 1992, inserted references to Davie, Harnett, Moore, and Watauga Counties in subsection (b).

Session Laws 1991 (Reg. Sess., 1992), c. 849, s. 1, effective July 6, 1992, inserted "Stanly" in subsection (b).

Session Laws 1991 (Reg. Sess., 1992), c. 936, s. 1, effective July 14, 1992, inserted references to Edgecombe, Halifax, and Nash Counties in subsection (b).

The 1993 amendment, effective May 24, 1993, deleted former subsection (b), regarding the applicability of the section to particular localities.

§ 153A-239: Repealed by Session Laws 1993, c. 62, s. 2, effective May 24, 1993.

Local Modification. — By virtue of Session Laws 1993, c. 62, s. 5, the local modifications under this section should be stricken from the main volume.

Editor's Note. — Section 153A-238 formerly excepted certain counties from the application of this section. Session Laws 1993, c. 62, repealed this section and made § 153A-238 statewide in application.

§ 153A-239.1. Naming roads and assigning street numbers in unincorporated areas for counties.

(a) A county may by ordinance name or rename any road within the county and not within a city, and may assign or reassign street numbers for use on such a road. In naming or renaming a road, a county may not:

(1) Change the name, if any, given to the road by the Board of Transportation, unless the Board of Transportation agrees;

(2) Change the number assigned to the road by the Board of Transportation, but may give the road a name in addition to its number; or

(3) Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

A county shall not name or rename a road or assign or reassign street numbers on a road until it has held a public hearing on the matter. At least 10 days before the day of the hearing, the board of commissioners shall cause notice of the time, place and subject matter of the hearing to be prominently posted at the county courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of such hearing in a newspaper of general circulation published in the county. After naming or renaming a road, or assigning or reassigning street numbers on a road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the Board of Transportation, and to any city within five miles of the road.

(b) Repealed by Session Laws 1993, c. 62, s. 3, effective May 24, 1993. (1979, 2nd Sess., c. 1319, s. 2; 1981, c. 568; 1983, cc. 98, 299;

1987 (Reg. Sess., 1988), cc. 900, 906; 1989, c. 335, s. 1; 1989 (Reg. Sess., 1990), cc. 836, 854, 911; 1991, c. 9, s. 2; 1991 (Reg. Sess., 1992), c. 778, s. 2; c. 849, ss. 2, 2.2; c. 936, s. 2; 1993, c. 62, s. 3.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1319, s. 2, as amended by Session Laws 1981, c. 568; 1983, cc. 98 and 299; 1987 (Reg. Sess., 1988), cc. 900 and 906; 1989, c. 335, s. 1; and 1989 (Reg. Sess., 1990), cc. 836, 854 and 911 has been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 62, amended this section to make it statewide in application and repealed former § 153A-240, which formerly applied to those counties to which this section did not apply.

Effect of Amendments. — Session Laws 1991 (Reg. Sess., 1992), c. 778, s. 2, effective June 24, 1992, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 849, s. 2.2, effective July 6, 1992, added references to Davie, Harnett, Moore, and Watauga Counties in subsection (b).

Session Laws 1991 (Reg. Sess., 1992), c. 849, s. 2, effective July 6, 1992, inserted "Stanly" in subsection (b).

Session Laws 1991 (Reg. Sess., 1992), c. 936, s. 2, effective July 14, 1992, inserted references to Edgecombe, Halifax, and Nash Counties in subsection (b).

The 1993 amendment, effective May 24, 1993, deleted "certain named" from the catchline of this section; added a colon at the end of the introductory language of subsection (a); capitalized "Change" in subdivisions (a)(1) and (a)(2); capitalized "Give" in subdivision (a)(3); and deleted subsection (b), which dealt with the applicability of the section to certain areas only.

§ 153A-240: Repealed by Session Laws 1993, c. 62, s. 4, effective May 24, 1993.

Local Modification. — By virtue of Session Laws 1993, c. 62, s. 5, the local modifications under this section should be stricken from the main volume.

Editor's Note. — Section 153A-239.1 formerly excepted certain counties from the application of this section. Session Laws 1993, c. 62, repealed this section and made § 153A-239.1 statewide in application.

§ 153A-241. Closing public roads or easements.

Local Modification. — Durham: 1993, c. 76, s. 1.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems,

(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,

(5) Off-street parking facilities,

(6) Public transportation systems,

(7) Structural and natural stormwater and drainage systems of all types. (1965, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1; 1979, c. 619, s. 1; 1989, c. 643, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 13.)

Local Modification. — Columbus: 1991 (Reg. Sess., 1992), c. 844; Duplin: 1991 (Reg. Sess., 1992), c. 844; Franklin: 1991 (Reg. Sess., 1992), c. 864; Hertford: 1991 (Reg. Sess., 1992), c. 844; Martin: 1991 (Reg. Sess., 1992), c. 844; Northampton: 1991 (Reg. Sess., 1992), c. 864.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 14, 1992, substituted "Wastewater collection, treatment" for "Sewage collection" in subdivision (2).

§ 153A-275. Authority to operate public enterprises.

(a) A county may acquire, lease as lessor or lessee, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises in order to furnish services to the county and its citizens. A county may acquire, construct, establish, enlarge, improve, maintain, own, and operate outside its borders any public enterprise.

(b) A county may adopt adequate and reasonable rules to protect and regulate a public enterprise belonging to or operated by it. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the county, and may be enforced with the remedies available under any provision of law. (1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1967, c. 462; 1971, c. 568; 1973, c. 822, s. 1; 1991 (Reg. Sess., 1992), c. 836, s. 2.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective October 1, 1992, and applicable to ordinances adopted prior to that date, added the subsection designations (a) and (b), and in subsection (b), in the first sentence deleted "by ordinance or resolution" following "A county may," and substituted "rules" for "rules and regulations," and added the second sentence.

§ 153A-277. Authority to fix and enforce rates.

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system. (1961, c. 1001, s. 1; 1973, c. 822, s. 1; 1991, c. 591, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 3; c. 1007, s. 45.)

Effect of Amendments. —

Session Laws 1991 (Reg. Sess., 1992), c. 932, s. 3, effective July 14, 1992, added the last sentence in subsection (a).

Session Laws 1991 (Reg. Sess., 1992), c. 1007, c. 45, effective July 21, 1992, in subsection (a1), in the second paragraph substituted "The fees established under this subsection must" for "Fees as established as provided in this subsection shall" in the first sentence, and substituted "subsection" for "section" in the last sentence, and substituted "for the service" for "pursuant to this act" in the second sentence of the third paragraph.

Part 2. Special Provisions for Water and Sewer Services.

§ 153A-285: Repealed by Session Laws 1993, c. 348, s. 4, effective January 1, 1994.

Cross References. — This section, concerning prerequisites to acquisition of water and water rights in certain counties, was repealed by Session Laws 1993, c. 348, s. 4, effective January 1, 1994. For present similar provisions, see G.S. 143-215.22I.

§ 153A-287: Repealed by Session Laws 1993, c. 348, s. 5, effective January 1, 1994.

Cross References. — This section, concerning the prohibition of diversion of water from certain river basins, was repealed by Session Laws 1993, c. 348, s. 5, effective January 1, 1994. For present similar provisions, see G.S. 143-215.22I.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-293. (See note) Collection of fees for solid waste disposal facilities and solid waste collection services.

Editor's Note. —

Session Laws 1991, c. 652, s. 6, which is noted under this section in the main volume, was amended by Session Laws 1991 (Reg. Sess., 1992), c. 1007, s. 26 to provide: "Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are repealed to clarify that G.S. 153A-293, as amended by this act, is a statewide statute and not a local statute. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act."

§ 153A-294. Solid waste defined.

As used in this Article, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1991 (Reg. Sess., 1992), c. 1013, s. 4.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, s. 10 made this section effective upon ratification. The act was ratified July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 1013, which enacted this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Part 4. Long Term Contracts for Disposal of Solid Waste.

§§ 153A-299.1 through 153A-299.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 1013, s. 5, effective July 22, 1992.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which repealed this part, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 763, s. 2, provides: "Any contract for solid waste disposal entered into by Bladen, Cumberland, and Hoke Counties which would have been lawful if this act had been in effect at the time the contract was entered into is ratified." The act was ratified June 9, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 763, s. 1, effective June 9, 1992, inserted "Bladen County," "Cumberland County," and "Hoke County" in § 153A-299.6 prior to its repeal.

Session Laws 1991 (Reg. Sess., 1992), c. 773, s. 1 effective June 22, 1992, inserted "Bertie County," "Chowan County," "Hertford County," and "Tyrrell County" in § 153A-299.6 prior to its repeal.

Session Laws 1991 (Reg. Sess., 1992), c. 775, s. 1, effective June 22, 1992, inserted "Moore County" in § 153A-299.6, prior to its repeal.

ARTICLE 16.

County Service Districts; County Research and Production Service Districts.

Part 1. County Service Districts.

§ 153A-301. Purposes for which districts may be established.

(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works;

(2) Fire protection;

(3) Recreation;
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
(5) Solid waste collection and disposal systems;
(6) Water supply and distribution systems;
(7) Ambulance and rescue;
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21;
(9) Cemeteries.

(b) The General Assembly finds that coastal-area counties have a special problem with lack of maintenance of platted rights-of-way, resulting in ungraded sand travelways deviating from the original rights-of-way and encroaching on private property, and such cartways exhibit poor drainage and are blocked by junk automobiles.

(c) To address the problem described in subsection (b), the board of commissioners of any coastal-area county as defined by G.S. 113A-103(2) may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:
(1) Removal of junk automobiles; and
(2) Street maintenance.

(d) The board of commissioners of a county that contains a protected mountain ridge, as defined by G.S. 113A-206(6), may define any number of service districts to finance for the district the maintenance of public roads that are located in the district, are not maintained by the Department of Transportation, and were recorded on a plat in the register of deeds office before October 1, 1975. The service district or districts created shall include only property within such platted subdivision and one or more additional contiguous platted subdivisions. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6; 1983 (Reg. Sess., 1984), c. 1078, s. 1; 1989, c. 620; 1993, c. 378, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 18, 1993, added subsection (d).

§ 153A-309.2. Rate limitation in certain districts.

(a) In connection with the establishment of a service district for fire protection as provided by G.S. 153A-301(2), if the board of commissioners adopts a resolution within 90 days prior to the public hearing required by G.S. 153A-302(c) but prior to the first publication of notice required by subsection (b) of this section, which resolution states that property taxes within a district may not be levied in excess of a rate of fifteen cents (15¢) on each one hundred dollars

($100.00) of property subject to taxation, then property taxes may not be levied in that service district in excess of that rate.

(b) Whenever a service district is established under this section, instead of the procedures for hearing and notice under G.S. 153A-302(c), the board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by G.S. 153A-302(b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least twice, with one publication not less than two weeks before the hearing, and the other publication on some other day not less than two weeks before the hearing. (1985, c. 724.)

Editor's Note. — The text of this section and its historical citation, as they appear in the main volume, are incorrect. The correct text and historical citation have been set out above.

Part 2. County Research and Production Service Districts.

§ 153A-311. Purposes for which districts may be established.

Editor's Note. — Session Laws 1985, c. 435, s. 2 prohibited any municipality from annexing a described tract of land in Durham and Wake Counties except under Parts 1 or 4 of Chapter 160A. The legal description of this tract can be found in c. 435, s. 2. The tract described is the Research Triangle Park, which is a county research and production service district.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

§ 153A-321. Planning agency.

CASE NOTES

Amendment to county zoning ordinance constituted a valid legislative prerogative to change the sanitary landfill use from a "special use permit" category to a "use by right under prescribed conditions" category and that section of the county zoning ordinance, which allowed the county zoning administrator to approve the county's permit application for the siting of a landfill, was constitutional and lawful on its face. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

Editor's Note. — Session Laws 1993, c. 469, s. 3(a), effective January 1, 1994, repeals various acts, including the following local modifications to this section: Session Laws 1993, c. 101, as to Wilkes; 1993, c. 139, as to Stokes; 1993, c. 156, as to Watauga; 1993, c. 267, as to Davidson and Davie; 1993, c. 296, as to Nash and Franklin. Section 3(b) of c. 469 provides that nothing in the section affects any ordinance adopted under the authority of any act repealed by s. 3(a) prior to the effective date of c. 469.

Session Laws 1993, c. 469, s. 5 provides:

"Sec. 5. (a) This act becomes effective January 1, 1994, except that as to any city or county, it becomes effective at any time between the date of ratification of this act and January 1, 1994 if the city or county, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"If the city or county is subject to a local act repealed by Section 3 of this act, the ordinance prevails over some or all of the local act if the ordinance so provides.

"(b) This section does not apply to Forsyth County or municipalities located within that county."

CASE NOTES

Failure to Comply with Notice Requirements. — Where there was no notice to the public or advertised public hearing prior to adoption of the ordinance as required by this section; the trial court's conclusion that the ordinance passed by the board imposing a moratorium on building permits pending zoning was invalid. Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation.

Local Modification. — (As to Article 18, Parts 1, 2, and 3) Cherokee: 1989 (Reg. Sess., 1990), c. 1049; (As to Part 2) Person: 1987 (Reg. Sess., 1988), c. 932, s. 1; Robeson: (As to Part 2) 1993, c. 131, s. 1; c. 553, s. 82; 1993 (Reg. Sess., 1994), c. 638, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 153A-331. Contents and requirements of ordinance.

Local Modification. — Orange: 1993 (Reg. Sess., 1994), c. 642, ss. 4(a), 4(c); Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 2.

For additional local modifications to this section, see the main pamphlet.

§ 153A-334. (Effective October 1, 1994 — See editor's note) Penalties for transferring lots in unapproved subdivisions.

If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. (1959, c. 1007; 1973, c. 822, s. 1; 1977, c. 820, s. 1; 1993, c. 539, s. 1063; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the first sentence.

§ 153A-335. "Subdivision" defined.

Local Modification. — Pasquotank: 1993, c. 194, s. 1; Stanly: 1993 (Reg. Sess., 1994), c. 574; Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 1.

For additional local modifications to this section, see the main pamphlet.

By virtue of Session Laws 1991 (Reg. Sess., 1992), c. 972, s. 3, the entry for Session Laws 1979, c. 349 for Transylvania should be stricken from the main volume.

By virtue of Session Laws 1993, c. 195, s. 1, Lincoln should be stricken from the main volume.

Part 3. Zoning.

§ 153A-340. Grant of power.

Local Modification. — Orange: 1993 (Reg. Sess., 1994), c. 642, ss. 4(b), 4(d).

CASE NOTES

The practice of conditional use zoning is an approved practice, etc. —

Review pursuant to writ of certiorari under this section does not encompass the adjudication of issues such as whether the denial of a special use permit constitutes a taking without the payment of just compensation, inverse condemnation or a violation of 42 U.S.C. 1983. Guilford County Dep't of Emergency Servs. v. Seaboard Chem. Corp., 114 N.C. App. 1, 441 S.E.2d 177 (1994).

Cited in Nello L. Teer Co. v. Orange County, 810 F. Supp. 679 (M.D.N.C. 1992); County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

§ 153A-341. Purposes in view.

CASE NOTES

Applied in Covington v. Town of Apex, 108 N.C. App. 231, 423 S.E.2d 537 (1992).

§ 153A-342. Districts; zoning less than entire jurisdiction.

CASE NOTES

Zoning Map Requirement. — This section does not require the county to have a zoning map for the entire county when its objective is to implement zoning on an area by area basis; only a map of the area being zoned and a full text of the zoning ordinance zoned are required. Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421, cert. denied, 332 N.C. 147, 419 S.E.2d 571 (1992).

§ 153A-343. Method of procedure.

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required in the following situations:

(1) The total rezoning of all property within the boundaries of a county or a zoning area as defined in G.S. 153A-342 unless rezoning involves zoning of parcels of land to less intense or more restrictive uses. If rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (a) of this section;

(2) The zoning is an initial zoning of the entire zoning jurisdiction area;

(3) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;

(4) The reclassification is an amendment to the zoning text; or

(5) The county is adopting a water supply watershed protection program as required by G.S. 143-214.5.

In any case where this subsection eliminates the notice required by subsection (a) of this section, a county shall publish once a week for four successive calendar weeks in a newspaper having general circulation in the area maps showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the county's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning. (1973, c. 822, s. 1; 1985, c. 595, s. 1; 1987, c. 807, s. 2; 1989 (Reg. Sess., 1990), c. 980, s. 2; 1993, c. 469, s. 2.)

Local Modification. — Session Laws 1993, c. 271, s. 1 (repealed effective January 1, 1995 except for Forsyth and municipalities located therein by Session Laws 1993, c. 469, s. 4(a)).

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1993, c. 469, which amended this section, in ss. 5 and 6 provides:

"Sec. 5. (a) This act becomes effective January 1, 1994, except that as to any city or county, it becomes effective at any time between the date of ratification of this act and January 1, 1994 if the city or county, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"If the city or county is subject to a local act repealed by Section 3 of this act, the ordinance prevails over some or all of the local act if the ordinance so provides.

"(b) This section does not apply to Forsyth County or municipalities located within that county.

"Sec. 6. (a) This act becomes effective January 1, 1995 as to Forsyth County or any municipality located within that county, but it becomes effective at any time between the date of ratification of this act and January 1, 1995 if the municipality or Forsyth County, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"The ordinance prevails over some or all of Chapter 455, Session Laws of 1987, as amended by Chapter 271, Session Laws of 1993, if the ordinance so provides."

Session Laws 1993, c. 469, s. 3(a), effective January 1, 1994, repeals various acts, including the following local modifications to this section: Session Laws 1993, c. 101, as to Wilkes: 1993, c. 139, as to Stokes; 1993, c. 156, as to Watauga; 1993, c. 267, as to Davidson and Davie; 1993, c. 271, as to Rockingham; 1993, c. 296, as to Nash and Franklin; 1993, c. 358, s. 15, as to Orange. In addition, by virtue of Session Laws 1993, c. 469, s. 3, the local modifications for Alexander, Cabarrus, Catawba, Iredell, Johnston, Martin, Randolph, Wake, and Yadkin should be stricken from the main volume. Section 3(b) of c. 469 provides that nothing in the section affects any ordinance adopted under the authority of any act repealed by s. 3(a) prior to the effective date of c. 469.

Effect of Amendments. —

The 1993 amendment, effective January 1, 1994, added the subsection (a) designation; in subsection (a) substituted "abstracts" for "abstracts; provided that this sentence does not apply in the case of a total rezoning of all property within the boundaries of a county unless the rezoning involves zoning of parcels of land to less intense uses or 'down zoning' in which case notification to owners of those parcels shall be made by mail in accordance with this section"; and added subsection (b).

CASE NOTES

Cited in Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421 (1992); Nello L. Teer Co. v. Orange County, 810 F. Supp. 679 (M.D.N.C. 1992).

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.

CASE NOTES

Amendment Held Not Applicable to Defendants. — Where the uncontradicted forecast of evidence established as a matter of law that defendants made substantial expenditures for the operation of a quarry on the property in question in good faith and in reliance upon the special use permit previously granted by the Zoning Board, a later amendment by the Zoning Board precluding operation of a quarry on such property would not apply to defendants. Cardwell v. Smith, 106 N.C. App. 187, 415 S.E.2d 770, cert. denied, 332 N.C. 146, 419 S.E.2d 569 (1992).

Cited in Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421 (1992); Nello L. Teer Co. v. Orange County, 810 F. Supp. 679 (M.D.N.C. 1992).

§ 153A-344.1. Vesting rights.

CASE NOTES

Cited in Nello L. Teer Co. v. Orange County, 810 F. Supp. 679 (M.D.N.C. 1992).

§ 153A-345. Board of adjustment.

CASE NOTES

Board of Adjustment Necessary Party. — In dispute over zoning code the trial court did not err in dismissing the action based on the failure to join the Board of Adjustment as a necessary party to the lawsuit. City of Raleigh v. Hudson Belk Co., 114 N.C. App. 815, 443 S.E.2d 112 (1994).

Cited in County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 153A-348. Statute of limitations.

CASE NOTES

Stated in Nello L. Teer Co. v. Orange County, 810 F. Supp. 679 (M.D.N.C. 1992).

Part 4. Building Inspection.

§ 153A-353. Joint inspection department; other arrangements.

A county may enter into and carry out contracts with one or more other counties or cities under which the parties agree to create and support a joint inspection department for enforcing those State and local laws and local ordinances and regulations specified in the agreement. The governing bodies of the contracting units may make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a county may designate an inspector from another county or from a city to serve as a member of the county inspection department, with the approval of the governing body of the other county or city, or may contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 153A-351.1 or G.S. 160A-411.1. The inspector, if designated from another county or city under this section, while exercising the duties of the position, is a county employee. The county shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the county as it does for an individual who is an employee of the county. The individual with whom the county contracts shall have errors and omissions and other insurance coverage acceptable to the county. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1959, c. 940; 1963, c. 639; 1965, c. 371; 1967, c. 495, s. 1; 1969, c. 918; c. 1010, s. 4; c. 1064, ss. 1, 5; c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 232, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 28, 1993, rewrote the second paragraph.

§ 153A-355. Conflicts of interest.

Unless he is the owner of the building, no member of an inspection department or other individual contracting with a county to conduct inspections shall be financially interested or employed by a business that is financially interested in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within the county's territorial jurisdiction or any part or system thereof, or in making plans or specifications therefor. No member of any inspection department or other individual contracting with a county to conduct inspections may engage in any work that is inconsistent with his duties or with the interest of the county. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031; 1961, cc. 763, 884, 1036; 1963, c. 868; 1965, cc. 243, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, s. 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1064, ss. 1, 4; c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 232, s. 2.)

Effect of Amendments. — The 1993 amendment, effective June 28, 1993, in the first sentence substituted "or other individual contracting with a county to conduct inspections shall" for "may" following "inspection department" and inserted "or employed by a business that is financially interested" preceding "in furnishing labor"; and in the second sentence inserted "or other individual contracting with a county to conduct inspections" following "inspection department."

§ 153A-356. (Effective October 1, 1994 — See editor's note) Failure to perform duties.

If a member of an inspection department willfully fails to perform the duties required of him by law, or willfully improperly issues a permit, or gives a certificate of compliance without first making the inspections required by law, or willfully improperly gives a certificate of compliance, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1064; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

§ 153A-357. Permits.

(a) **(Effective October 1, 1994 — See editor's note)** No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;

(2) The installation, extension, or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2; 1987 (Reg. Sess., 1988), c. 1000, s. 1; 1993, c. 539, s. 1065; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 1.)

Local Modification. — Alamance: 1993, c. 381, s. 1

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the last sentence of subsection (a).

The 1993 (Reg. Sess., 1994) amendment, effective July 13, 1994, inserted the third sentence of subsection (a).

§ 153A-361. (Effective October 1, 1994 — See editor's note) Stop orders.

Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance or his designee written notice of appeal, with a copy to the local inspector. The Commissioner or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal, no further work may take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or

(2) Appealing to the Superior Court as provided in G.S.143-141.

Violation of a stop order constitutes a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 4; 1989, c. 681, s. 5; 1993, c. 539, s. 1066; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the last sentence.

§ 153A-363. (Effective October 1, 1994 — See editor's note) Certificates of compliance.

At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection. If he finds that the completed work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or removed may be occupied until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied before completion of the entire building. Violation of this section constitutes a Class 1 misdemeanor. (1973, c. 822, s. 1; 1993, c. 539, s. 106; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the last sentence.

§ 153A-367. (Effective October 1, 1994 — See editor's note) Removing notice from condemned building.

If a person removes a notice that has been affixed to a building by a local inspector and that states the dangerous character of the building, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1068; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

§ 153A-371. (Effective October 1, 1994 — See editor's note) Failure to comply with order.

If the owner of a building fails to comply with an order issued pursuant to G.S. 153A-369 from which no appeal has been taken, or fails to comply with an order of the board of commissioners following an appeal, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1069; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

Part 5. Community Development.

§ 153A-377. Acquisition and disposition of property for redevelopment.

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

Article 22.

Regional Solid Waste Management Authorities.

§ 153A-421. Definitions; applicability; creation of authorities.

(a) Unless a different meaning is required by the context, terms relating to the management of solid waste used in this Article have the same meaning as in G.S. 130A-2 and in G.S. 130A-290. As used in this Article, the term "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. In addition to the meaning set out in G.S. 130A-290, the term "unit of local government" means the Eastern Band of the Cherokee Indians in North Carolina.

(b) This Article shall not be construed to authorize any authority created pursuant to this Article to regulate or manage hazardous waste. An authority created under this Article may manage sludges, other than a sludge that is a hazardous waste, under rules of the Commission for Health Services and criteria established by the Department of Environment, Health, and Natural Resources for the management of sludge.

(c) Any two or more units of local government may create a regional solid waste management authority by adopting substantially identical resolutions to that effect in accordance with the provisions of this Article. The resolutions creating a regional solid waste management authority and any amendments thereto are referred to in this Article as the "charter" of the regional solid waste management authority. Units of local government which participate in the creation of a regional solid waste management authority are referred to in this Article as "members".

(d) As used in G.S. 153A-427(a)(24), the term "transferred" means placed at or delivered to any (i) place normally and customarily used by the authority for the collection of solid waste, (ii) other place agreed upon by the generator or owner of recyclable materials and the authority, or (iii) facility owned, operated, or designated by the authority. (1989 (Reg. Sess., 1990), c. 888, s. 1; 1991, c. 580, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 4; c. 948, s. 1.)

Effect of Amendments. —

Session Laws 1991 (Reg. Sess., 1992), c. 932, s. 4, effective July 14, 1992, deleted "or sludge" following "hazardous waste" in the second sentence of subsection (a), and in subsection (b) substituted "hazardous waste" for "hazardous wastes or sludge" in the first sentence and added the second sentence.

Session Laws 1991 (Reg. Sess., 1992), c. 948, s. 1, effective July 14, 1992, added the last sentence in subsection (a).

§ 153A-430. Compliance with other law.

(a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1004, s. 47, effective July 20, 1990.

(b) An authority created pursuant to this Article shall comply with all applicable federal and State laws, regulations, and rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health.

(c) Except as provided by subsection (d) of this section, a unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste or for the protection of the environment shall, by becoming a member of a regional solid waste management authority created under this Article and as a condition of such membership, agree to comply with and to be bound by all applicable federal and State laws, regulations, and rules enacted or adopted for the management of solid waste and for the protection of the environment with respect to all solid waste management activities of the authority within the territorial jurisdiction of the unit of local government and with respect to all solid waste management activities performed by the unit of local government in connection with membership in the authority.

(d) A unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste shall obtain all permits that may be necessary for the conduct of solid waste management activities within the territorial jurisdiction of the unit of local government as provided by federal law and regulations. Responsibility for the enforcement of laws, regulations, and rules enacted or adopted for the management of solid waste within the territorial jurisdiction of a unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste shall be as provided by federal law and regulations. (1989 (Reg. Sess., 1990), c. 888, s. 1; c. 1004, s. 47; c. 1075, s. 5; 1991 (Reg. Sess., 1992), c. 948, s. 2.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 14, 1992, added subsections (c) and (d).

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Liability Not Waived Where Action Excluded From Coverage. — Because county liability insurance policy excluded libel action from coverage, the county did not waive its governmental immunity as to this action by purchasing the policy. Dickens v. Thorne, 110 N.C. App. 39, 429 S.E.2d 176 (1993).

Chapter 156.

Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Article 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

Sec.
156-19. (Effective October 1, 1994 — See editor's note) Obstructing canal or ditch dug under agreement.
156-24. (Effective October 1, 1994 — See editor's note) Obstructing drain cut by consent.
156-25. (Effective October 1, 1994 — See editor's note) Protection of canals, ditches, and natural drains.

Article 2.

Jurisdiction in County Commissioners.

156-32. (Effective October 1, 1994 — See editor's note) Petition filed; board appointed; refusal to serve misdemeanor.
156-33. (Effective October 1, 1994 — See editor's note) Duty of board; refusal to comply with their requirements misdemeanor.

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

156-59. Board of viewers appointed by clerk.
156-74. Adjudication upon final report.
156-76. Compensation of board of viewers.

Article 6.

Drainage Commissioners.

156-79. Appointment and organization under original act.

Sec.
156-81. Appointment and organization under amended act.
156-81.1. Treasurer.
156-82.2. Appointment of drainage commissioners.
156-82.3. Validation of previous actions.

Article 7.

Construction of Improvement.

156-83. Superintendent of construction.
156-92. (Effective October 1, 1994 — See editor's note) Control and repairs by drainage commissioners.

Article 7A.

Maintenance.

156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue.

Article 8.

Assessments and Bond Issue.

156-97. Bonds issued.
156-97.1. Issuance of assessment anticipation notes.
156-111. (Effective October 1, 1994 — See editor's note) Sheriff to make monthly settlements; penalty.
156-112. (Effective October 1, 1994 — See editor's note) Duty of treasurer to make payment; penalty.
156-114. Conveyance of land; change in assessment roll; procedure.

Article 10.

Reports of Officers.

156-132. (Effective October 1, 1994 — See editor's note) Penalty for failure.
156-134. Duties of the auditor.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

ARTICLE 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-19. (Effective October 1, 1994 — See editor's note) Obstructing canal or ditch dug under agreement.

Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a Class 3 misdemeanor. (1899, c. 255; Rev., s. 3375; C.S., s. 5278; 1993, c. 539, s. 1070; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor and be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days".

§ 156-24. (Effective October 1, 1994 — See editor's note) Obstructing drain cut by consent.

If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a Class 3 misdemeanor. (1891, c. 434; Rev., s. 3376; C.S., s. 5282; 1993, c. 539, s. 1071; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days".

§ 156-25. (Effective October 1, 1994 — See editor's note) Protection of canals, ditches, and natural drains.

If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a Class 3 misdemeanor. (1901, c. 478; Rev., s. 3382; C.S., s. 5283; 1993, c. 539, s. 1072; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and upon conviction shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned not less than 10 nor more than 30 days".

ARTICLE 2.

Jurisdiction in County Commissioners.

§ 156-32. (Effective October 1, 1994 — See editor's note) Petition filed; board appointed; refusal to serve misdemeanor.

Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interest of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within 10 days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days' notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars ($25.00) for the payment of current expenses not otherwise provided for in this Article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a Class 3 misdemeanor. (1887, c. 267; Rev., ss. 3379, 4011; C.S., s. 5290; 1993, c. 539, s. 1073; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor and be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days" in the last sentence.

§ 156-33. (Effective October 1, 1994 — See editor's note) Duty of board; refusal to comply with their requirements misdemeanor.

The board provided for in G.S. 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such watercourse, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a Class 1 misdemeanor. (1887, c. 267, ss. 2, 7; Rev., ss. 3377, 4012; C.S., s. 5291; 1993, c. 539, s. 107; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and fined not exceeding two hundred dollars ($200.00) or imprisoned not exceeding two years" in the last sentence.

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

CASE NOTES

Drainage District Subject to Open Meetings Requirements. — As a political subdivision of the state, organized pursuant to the provisions of this section with quasi-judicial and administrative authority, plaintiff drainage district was subject to the open meetings requirements of § 143-318.10. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988), modified on other grounds, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-59. Board of viewers appointed by clerk.

The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Environment, Health, and Natural Resources; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C.S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(157).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the second sentence.

§ 156-74. Adjudication upon final report.

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Environment, Health, and Natural Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C.S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(158).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the fourth sentence of the first paragraph.

§ 156-76. Compensation of board of viewers.

The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Environment, Health, and Natural Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C.S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(159).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the first sentence.

§ 156-78.1. Municipalities.

Cross References. — As to property taxes to provide for drainage projects or programs, see § 160A-209.

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Appointment and organization under original act.

After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, in the manner set forth in G.S. 156-81, who shall be designated as the board of drainage commissioners. Any vacancy thereafter occurring shall be filled by the clerk or clerks of the superior court in the manner set forth in G.S. 156-81. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of .... District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C.S., s. 5337; 1947, c. 273; 1963, c. 767, s. 3; 1989 (Reg. Sess., 1990), c. 959, s. 2.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

Effect of Amendments. — The 1989 (Reg. Sess., 1990) amendment, effective July 18, 1990, substituted "Appointment" for "Election" in the catchline, inserted "in the manner set forth in G.S. 156-81" in the first sentence, deleted the former second, third and fourth sentences which read: "Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election," and in the present second sentence inserted "or clerks" and added "in the manner set forth in G.S. 156-81."

CASE NOTES

Cited in Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-81. Appointment and organization under amended act.

(a) Method of Appointment. —
The manner of appointment shall be as follows:

(1) If the drainage district shall lie solely within one county, the clerk of superior court for such county shall appoint such commissioners.

(2) If the said district shall lie in more than one county, then such commissioners shall be appointed by unanimous action of the clerks of court for the counties wherein any part of such district lies.

(b) Organization. — Immediately after the appointment of the board of drainage commissioners, the clerk of the court of the county wherein such drainage proceeding is pending shall notify each of the commissioners in writing to appear at a certain time and place within the district and organize. The clerk or clerks of court, as the case may be, shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he or they shall consider carefully and impartially the respective qualifications of each of the members for the position.

(c) Term of Office. — The term of service of the members of the board of drainage commissioners so appointed shall begin upon their appointment. Where all three commissioners are appointed at once, one commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be unanimously designated by the clerk or clerks of the court. Thereafter each member shall be appointed for three years. The clerk of the court for the county wherein the proceeding is pending shall record in the drainage record the date of appointment, the members appointed, and the beginning and expiration of their term of office.

(d) Vacancies Filled. — If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk or clerks, as the case may be, shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk of the county wherein the proceeding is pending shall keep a similar record of any appointment to fill vacancies. The person appointed to fill the vacancy shall be appointed in the manner set forth in subsection (a) of this section and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the appropriate clerk or clerks of the superior court of any vacancy in the board.

(e) Failure to Appoint. — If for any reason the clerk or clerks of the court shall fail to provide for the appointment of drainage commissioners prior to the expiration of a term, the incumbents shall continue to hold their office as commissioners until their successors are appointed and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire immediately upon the appointment of new commissioners pursuant to subsection (a) of this section.

(f) Meetings. — The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owners of a majority in area of the land in the district.

(g) Compensation. — The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twenty-five dollars ($25.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(h) Application of Section. — The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization.

(i) Repealed by Session Laws 1989 (Regular Session, 1990), c. 959, s. 3, effective July 18, 1990. (1917, c. 152, s. 5; 1919, cc. 109, 217; C.S., s. 5339; 1947, c. 935; 1949, c. 956, ss. 1-3; 1957, c. 912, s. 1; 1975, c. 494; 1989 (Reg. Sess., 1990), c. 959, s. 3.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

Effect of Amendments. — The 1989 (Reg. Sess., 1990) amendment, effective July 18, 1990, rewrote this section.

CASE NOTES

Unconstitutional Delegation of Legislative Powers. — Discretion provided by subsections (a) and (i) of this section to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Landowners in Drainage District Prohibited from Voting Deprived of Equal Protection of the Laws. — Where some landowners who lived in a drainage district could vote for the clerk who appointed the commissioners of the drainage district and some landowners could not, the defendant nonvoters had been deprived of a fundamental right; furthermore, plaintiff drainage district failed to show that the classification of voters in this case was necessary to promote a compelling governmental interest; therefore, defendants were deprived equal protection of the laws in violation of N.C. Const., Art. I, § 19. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-81.1. Treasurer.

The appointing authority as determined by G.S. 156-81 shall appoint a treasurer for the drainage district for a term not to exceed 12 months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in Subchapter III of Chapter 156 of the General Statutes of North Carolina, to "treasurer" or "county treasurer" or "county auditor" are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided. (1963, c. 767, s. 4; 1989 (Reg. Sess., 1990), c. 959, s. 6.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

Effect of Amendments. — The 1989 (Reg. Sess., 1990) amendment, effective July 18, 1990, substituted "appointing authority as determined by G.S. 156-81" for "clerk of the superior court for the county where the district was organized" in the first sentence of the first paragraph.

§ 156-82.2. Appointment of drainage commissioners.

Notwithstanding any other provision of law (including, where applicable, any special acts or local modification of general law), the General Assembly hereby appoints all sitting drainage district commissioners and drainage commission treasurers, as of the date of ratification of this section, as commissioners, officers, and treasurers of their respective districts. Said commissioners, officers, and treasurers shall continue in office until such time as appointments shall be made as provided in G.S. 156-81 and G.S. 156-81.1, which appointments shall be made by the clerk or clerks of the superior court not later than January 1, 1991. (1989 (Reg. Sess., 1990), c. 959, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 8 made this section effective upon ratification. The act was ratified July 18, 1990.

Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

§ 156-82.3. Validation of previous actions.

(a) All expenditures heretofore incurred, and all actions heretofore taken, by a drainage district for purposes authorized by this Chapter are hereby validated notwithstanding any defect in the selection of any or all of its commissioners or any other defect.

(b) The provisions of this section are expressly made applicable to any and all bonds and other financial obligations of any such district. No action based on the alleged invalidity of the assessments heretofore made or of any such bonds or other obligations of a district shall lie after January 1, 1991, to enjoin or contest the enforceability of any such assessment, bond, or other obligation. (1989 (Reg. Sess., 1990), c. 959, s. 5.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 8 made this section effective upon ratification. The act was ratified July 18, 1990.

Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

ARTICLE 7.

Construction of Improvement.

§ 156-83. Superintendent of construction.

The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Environment, Health, and Natural Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C.S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(160).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the second sentence of the first paragraph.

§ 156-92. (Effective October 1, 1994 — See editor's note) Control and repairs by drainage commissioners.

Whenever any improvement constructed under this Subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this Subchapter, and any person causing such injury shall be guilty of a Class 3 misdemeanor, and upon conviction thereof may only be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C.S., s. 5349; 1947, c. 982, s. 1; 1993, c. 539, s. 107; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only" following "conviction thereof may" in the last sentence.

ARTICLE 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue.

(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners of the district. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district. Notice of the meeting at which the board of drainage commissioners determines the amount of the annual levy shall be mailed to the owners, as shown on the county tax records, of all property subject to assessment, or shall be published once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be sent or published not more than 30 days nor less than 10 days prior to the meeting, and shall state the time, place, and purposes of the meeting. Any interested person has the right to be heard at the meeting prior to the drainage commissioners taking any action on the proposed assessment. In the event that any interested and aggrieved party disagrees with the said assessment, he may, within 20 days of the mailing of the notice of the assessment, file with the clerk for the county wherein the proceeding is pending, a notice specifically setting forth his objection. The Secretary of the District shall file in the records of the proceeding a certification setting forth the date of the mailing of the notice of the annual maintenance assessments. The clerk shall thereupon notify the senior resident superior court judge of such district who shall set the objection down for hearing at the earliest possible time. The court shall hear the matter upon the objections duly set forth in the notice of objection.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(b) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to coordinate their maintenance operations and the drainage districts desiring to coordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may coordinate their work without regard to county lines.

(c) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(d) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(e) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located.

(f) The provisions for maintenance as set forth in this Article and elsewhere in this Subchapter III shall include water-retardant structures and the operation of such.

(g) The board of commissioners may borrow money in anticipation of revenue from maintenance assessments, as hereinbefore provided for, from which assessments the loan shall be repaid. The amount which the commissioners may borrow shall not be limited to the revenues anticipated for any one year. The terms and provisions of such loan shall be approved by the clerk of the superior court which approval shall be requested in the form of a petition and order in the proceeding by virtue of which the district was organized. The proceeds of said loan shall be used only for purposes set forth in Article 7A of Chapter 156. (1949, c. 1216; 1959, c. 597, s. 4; 1961, c. 614, s. 8; 1989 (Reg. Sess., 1990), c. 959, s. 4; 1991, c. 634, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

Effect of Amendments. — The 1989 (Reg. Sess., 1990) amendment, effective July 18, 1990, in subsection (a), in the first paragraph substituted "of the district" for "and must be approved by the clerk of the superior court prior to their annual levy" in the second sentence, deleted "as approved by the clerk of the superior court" at the end of the third sentence, and added the fourth through the last sentences.

The 1991 amendment, effective October 1, 1991, in subsection (a) in the first paragraph added the fourth, fifth, and sixth sentences, and deleted the former eighth, ninth, and tenth sentences relating, respectively, to publication of the notice of the meeting, the form of the notice, and the right of interested persons to be heard prior to action on a proposal assessment.

CASE NOTES

The land clause of the Constitution of North Carolina is violated insofar as § 156-138.3 dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district; the imposition of these assessments was not a matter of mathematical computation, but rather, it involved some discretion on the part of the commissioners. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

ARTICLE 8.

Assessments and Bond Issue.

§ 156-95. Assessment and payment; notice of bond issue.

CASE NOTES

Drainage district assessments are not taxes. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-97. Bonds issued.

At the expiration of 15 days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer. Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(1) The bonds shall be serial bonds;

(2) The denomination of the bonds shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000);

(3) The interest upon said bonds shall not be more than fourteen percent (14%) per annum, from the date of issue and payable semiannually;

(4) The first annual installment of principal shall fall due not less than three years nor more than six years after the date of the bonds;

(5) Each annual installment of principal shall be not less than two percent (2%) nor more than ten percent (10%) of the total bonds authorized;

(6) If the total amount of bonds to be issued does not exceed ten percent (10%) of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than 10 years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than fourteen percent (14%) per annum;

(7) The board of commissioners may issue bond anticipation note or notes to be redeemed and paid upon the sale and delivery of bonds herein provided for. If such bond anticipation note or notes are issued, at the discretion of the commissioners, such may be done after the bonds have been sold and prior to the printing and delivery of said bonds and must be paid from the proceeds of said bonds when delivered. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C.S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4; 1969, c. 878; 1985, c. 136, ss. 1, 2.)

Effect of Amendments. — The 1985 amendment, effective April 29, 1985, substituted "fourteen percent (14%)" for "eight percent (8%)" in subdivision (3) and substituted "fourteen percent (14%)" for "eight per centum (8%)" in the second sentence of subdivision (6).

§ 156-97.1. Issuance of assessment anticipation notes.

In lieu of the bonds provided for in G.S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than fourteen percent (14%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two percent (2%) nor more than twenty-five percent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this Article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7; 1985, c. 136, s. 3.)

Effect of Amendments. — The 1985 amendment, effective April 29, 1985, substituted "fourteen percent (14%)" for "six percent (6%)" in the second sentence of the first paragraph.

§ 156-105. Assessment lien; collection; sale of land.

CASE NOTES

Failure to Levy Annual Assessments No Bar to Later Collection. — This section provides that assessments shall be collected "in the same manner and by the same officers as the state and county taxes are collected," and § 105-394(3) provides that "[t]he failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law" is an immaterial irregularity that does not affect the validity of the assessment; therefore, plaintiff drainage district's failure to levy annual assessments for 1974 and 1983 by the first Monday in September of those years did not bar later collection of the assessments. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988), rev'd in part and aff'd in part, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-111. (Effective October 1, 1994 — See editor's note) Sheriff to make monthly settlements; penalty.

The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of the interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a Class 1 misdemeanor and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C.S., s. 5367; 1963, c. 767, s. 4; 1993, c. 539, s. 1076; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and, upon conviction, shall be subject to fine or imprisonment, in the discretion of the court" in the second sentence.

§ 156-112. (Effective October 1, 1994 — See editor's note) Duty of treasurer to make payment; penalty.

It shall be the duty of the treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The treasurer shall be guilty of a Class 1 misdemeanor if he shall willfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C.S., s. 5368; 1963, c. 767, s. 4; 1993, c. 539, s. 1077; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court" in the second sentence.

§ 156-114. Conveyance of land; change in assessment roll; procedure.

(a) Status of Land Fixed. — The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

(b) Conveyance before Final Report. — If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

(c) Conveyance after District Established. — After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

(d) Duty of Chairman of Drainage Commissioners and Clerk. — The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

(e) **(Effective October 1, 1994 — See editor's note)** Failure of Chairman of Board to Act. — If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be willful, he shall be guilty of a Class 1 misdemeanor.

(f) When Owner May File Petition with Clerk. — If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

(g) Effect of Change in Assessment Roll. — No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

(h) Clerk to Prepare New Assessment Rolls. — It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

(i) Number of Copies. — In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safekeeping and reference by him.

(j) Costs Determined. — As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

(k) Chairman Represents Board. — As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

(*l*) Application of Section. — The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C.S., s. 5370; 1993, c. 539, s. 1078; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court" in the last sentence of subsection (e).

ARTICLE 10.

Reports of Officers.

§ 156-132. (Effective October 1, 1994 — See editor's note) Penalty for failure.

Any board of commissioners of any drainage district in the State, and each of the members thereof, which shall fail or refuse to file the statements or accounts, as provided in G.S. 156-130 and 156-131, shall be deemed guilty of a Class 1 misdemeanor. (1917, c. 72, s. 3; C.S., s. 5376; 1957, c. 1410, s. 3; 1993, c. 539, s. 1079; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and upon conviction shall be punished in the discretion of the court".

§ 156-134. Duties of the auditor.

The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a session of superior court in the county following the first Monday in July, and a copy to the district attorney of the prosecutorial district as defined in G.S. 7A-60 in which the county is located, and it shall be the duty of such district attorney to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C.S., s. 5378; 1963, c. 767, s. 4; 1973, c. 47, s. 2; c. 108, s. 97; 1987 (Reg. Sess., 1988), c. 1037, s. 124.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "prosecutorial district as defined in G.S. 7A-60" for "judicial district" in the last paragraph.

ARTICLE 11.

General Provisions.

§ 156-138.3. Notice.

CASE NOTES

This section violates the law of the land clause of the Constitution of North Carolina insofar as it dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Sec.
157-5. Appointment, qualifications and tenure of commissioners.
157-29. Rentals and tenant selection.
157-29.1. Fraudulent misrepresentation.
157-39.1. Area of operation of city, county and regional housing authorities.

Article 5.

Indian Housing Authority.

Sec.
157-66. Authority created.
157-67. Powers of Authority; applicability of certain laws; powers of Governor and Commission of Indian Affairs.
157-69. Area of operation.

ARTICLE 1.

Housing Authorities Law.

§ 157-5. Appointment, qualifications and tenure of commissioners.

An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official. Notwithstanding G.S. 157-7, 14-234, or any other provision of law, no person shall be barred from serving as a commissioner of any housing authority created under this Chapter because such person is a tenant of the authority or a recipient of housing assistance through any program operated by the authority; provided, that no such commissioner shall be qualified to vote on matters affecting his official conduct or matters affecting his own individual tenancy, as distinguished from matters affecting tenants in general; and further provided, that no more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority. Avery, Beaufort, Bertie, Burke, Caldwell, Camden, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Graham, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lenoir, Macon, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Pitt, Polk, Robeson, Rowan, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson and Yadkin Counties are exempted from any provision of law allowing a person who is a tenant of the authority to serve as a commissioner of a housing authority. The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5; 1971, c. 362, ss. 2-5; 1981, c. 864.)

Local Modification. — City of Charlotte: 1989 (Reg. Sess., 1990), c. 835 (Applicable to terms of office commencing on or after July 3, 1990); Washington: 1993 (Reg. Sess., 1994), c. 693, s. 1.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — This section is set out above to correct an error in the main volume.

§ 157-29. Rentals and tenant selection.

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, or portions of projects, for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement. (1939, c. 150; 1985, c. 741, s. 2; 1987, c. 464, s. 5; 1989, c. 272.)

Effect of Amendments. — The 1989 amendment, effective June 8, 1989, in the first sentence of subsection (c), deleted "not" preceding "terminate," deleted "other than" following "to renew a rental agreement," and substituted "whether or not such failure was the fault of the tenant," for "without regard to fault on the part of the tenant" in clause (i).

§ 157-29.1. Fraudulent misrepresentation.

(a) **(Effective October 1, 1994 — See editor's note)** Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive housing assistance in the amount or value of not more than four hundred dollars ($400.00) is guilty of a Class 1 misdemeanor.

(b) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, or continues to receive housing assistance in the amount or value of more than four hundred dollars ($400.00) is guilty of a Class I felony.

(c) As used in this section the word "person" means person, association, consortium, body politic, partnership, or other group, entity, or organization. (1985, c. 741, s. 1; 1993, c. 539, s. 1080; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court" in subsection (a).

§ 157-39.1. Area of operation of city, county and regional housing authorities.

(a) The boundaries or area of operation of a housing authority created for a city shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city, except as otherwise provided herein. Notwithstanding the previous sentence, a housing authority created for a city may operate and perform any of its lawful functions within any other city that has a common boundary with a city creating an authority when requested to do so by resolution of the governing body of such other city. The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in this Article) all of the counties for which such regional housing authority is created and established: Provided, that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its power within such city: Provided, that the jurisdiction of any rural housing authority to which the Secretary of State has heretofore issued a certificate of incorporation shall extend to within a distance of one mile of the town or city limits of any town or city having a population in excess of 500, located in any county now or hereafter constituting a part of the territory of such rural housing authority: Provided, further, that this provision shall not affect the jurisdiction of any city housing authority to which the Secretary of State has heretofore issued a certificate of incorporation. A housing authority created for a county may operate and perform any of its lawful functions anywhere within the municipal boundaries of any city located in whole or in part within the county for which it is created, when requested to do so by resolution of the governing body of such city.

(b) In any county in which a city housing authority has been established, but where there are portions of the county in which the city is located which are more than 10 miles from the territorial boundaries of the city, the city housing authority is authorized to operate in areas of the county beyond such limit, which are not within another city, upon the adoption of a joint resolution by the city council and the board of county commissioners. Such joint resolution must find that in such additional area, that insanitary or unsafe inhabited dwelling accommodations exist in such area or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford. A public hearing on such resolution need be held only by the board of county commissioners.

(c) A joint resolution adopted under subsection (b) of this section may, in lieu of the appointment provisions of G.S. 157-5, provide that the board of commissioners of the housing authority shall be composed of nine members, with a number (not less than five) to be appointed by the mayor, and the remainder to be appointed by the board of county commissioners. Such housing authority commissioners shall be subject to removal by the appointing person or board under the procedural requirements of G.S. 157-8. (1943, c. 636, s. 5; 1961, c. 200, s. 2; 1979, 2nd Sess., c. 1108, ss. 1, 2; 1993, c. 458, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, added the last sentence of subsection (a).

ARTICLE 5.

Indian Housing Authority.

§ 157-66. Authority created.

There is hereby created and established a public body corporate and politic to be known as the North Carolina Indian Housing Authority which shall be governed by the provisions of law controlling housing authorities as set out in this Chapter as well as other applicable provisions of the General Statutes. It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above. (1977, c. 1112, s. 1; 1989 (Reg. Sess., 1990), c. 1066, s. 15(b); 1993, c. 201, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1066, which amended this section, in s. 15(a) provided: "The Director of the Office of Indian Housing has stated that if the North Carolina State Indian Housing Authority is a State agency, then it will be ineligible to receive more than $1,000,000 per year in federal assistance. This section clarifies that the Authority is not a State agency."

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 154 provided: "Except as otherwise provided, this act shall become effective July 1, 1990."

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 2 provided: "This act shall be known as 'The Current Operations Appropriations Act of 1990.'"

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 153 is a severability clause.

Effect of Amendments. — The 1989 (Reg. Sess., 1990) amendment added the language "which shall be governed" in the second sentence and added the last sentence.

The 1993 amendment, effective June 23, 1993, deleted "State" preceding "Indian Housing Authority" in this section. In addition, the amendment deleted "State" preceding "Indian Housing Authority" in the heading of Article 5.

Legal Periodicals. — For article on criminal jurisdiction on the North Carolina Cherokee Indian reservation, see 24 Wake Forest L. Rev. 335 (1989).

§ 157-67. Powers of Authority; applicability of certain laws; powers of Governor and Commission of Indian Affairs.

The Indian Housing Authority, hereafter referred to as the Authority, shall exercise its powers to provide housing for Indians of low income. Except as otherwise provided in this Article, all the provisions of law applicable to housing authorities created for municipalities pursuant to Chapter 157 of the General Statutes shall be applicable to this Authority, unless a different meaning clearly appears from the context. The Governor and the Commission of

Indian Affairs are hereby authorized to exercise all appointing and other powers with respect to this Authority that are vested pursuant to said Chapter 157 in the chief executive officer and governing body of a municipality. (1977, c. 1112, s. 2; 1993, c. 201, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 23, 1993, deleted "State" preceding "Indian Housing Authority" in this section.

§ 157-69. Area of operation.

The area of operation of the Authority shall include the entire State: Provided, that the Authority shall not undertake any housing project or projects within the area of operation of any city, county or regional housing authority unless a resolution shall have been adopted by such city, county or regional housing authority declaring that there is a need for the Indian Housing Authority to exercise its powers within such city, county or regional housing authority's area of operation. (1977, c. 1112, s. 4; 1993, c. 201, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 23, 1993, deleted "State" preceding "Indian Housing Authority".

Chapter 158.

Editor's Note. — The legislation and annotations affecting Chapter 158 have been included in a recently published replacement chapter.

Chapter 159.

Editor's Note. — The legislation and annotations affecting Chapter 159 have been included in a recently published replacement chapter.

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

Article 2.

Joint Agencies; Municipalities.

Sec.
159B-11. General powers of joint agencies; prerequisites to undertaking projects.
159B-18. Trust funds; investment authority.
159B-38. Confidentiality of contract discussions.
159B-39 through 159B-41. [Reserved.]

ARTICLE 2.

Joint Agencies; Municipalities.

§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined:

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards.

(9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency; no provisions of law with respect to the acquisition, construction, or operation of property by other public bodies shall be applicable to any project as defined in this Chapter and as authorized by this subdivision unless the General Assembly shall specifically so state;

(11) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, or of the United States;

(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to any agency created pursuant to this Chapter unless the legislature shall specifically so state;

(13) To dispose of by private negotiated sale or lease, or otherwise an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public

bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;

(15) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(16) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this State or any other state owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this Chapter, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, corporations and others;

(18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other person;

(19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed;

(19a) To purchase power and energy, and services and facilities relating to the utilization of power and energy, from any source on behalf of its members and other customers and to furnish, sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to the same, to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the board of commissioners of the joint agency shall determine;

(19b) To provide aid and assistance to municipalities, and to act for or on behalf of any municipality, in any activity related to the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchased power options, and related to the development, construction and operation of supply-side and demand-side resources, and to do such other acts and things as provided in Article 3 of this Chapter as if the joint agency were a joint municipal assistance agency, and to carry out the powers granted in this Chapter in relation thereto; to provide aid and assistance to any joint municipal assistance agency in the exercise of its respective powers and functions; and

(20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency therein.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;

(2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;

(3) The estimated useful life of such project;

(4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;

(5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1; 1977, c. 385, ss. 6-10; 1983, c. 574, ss. 4, 4.1; 1985, c. 212, s. 1; c. 723, s. 3; 1991 (Reg. Sess., 1992), c. 888, s. 2; 1993, c. 182, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 21, 1993, and applicable to all contracts entered into prior to or after the effective date of this amendment for the purposes enumerated in subdivision (10) of this section, in subdivision (10), added at the end, "no provisions of law with respect to the acquisition, construction, or operation of property by other public bodies shall be applicable to any project as defined in this Chapter and as authorized by this subdivision unless the General Assembly shall specifically so state".

§ 159B-18. Trust funds; investment authority.

(a) Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulation as this Chapter and such resolution or trust agreement may provide.

(b) Any moneys received pursuant to the authority of this Chapter and any other moneys available to a joint agency for investment may be invested:

(1) As provided in subsection (a) of this section;

(2) As provided in G.S. 159-30, except that:

  a. A joint agency may also invest, in addition to the obligations enumerated in G.S. 159- 30(c)(2), in bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America.

  b. For purposes of G.S. 159-30(c)(12), a joint agency may also enter into repurchase agreements with respect to, in addition to the obligations enumerated in G.S. 159-30(c)(12):

    1. Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the

Farmers Home Administration, and the United States Postal Service;

2. Bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America;
3. Mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;
4. Direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; and
5. Direct or indirect obligations, trust certificates, or other similar instruments which are both: (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates; and (iii) for purposes of the second proviso of G.S. 159-30(c)(12)a., the financial institution serving either as trustee or as fiscal agent for a joint agency holding the obligations subject to the repurchase agreement may also be the provider of the repurchase agreement if the obligations that are subject to the repurchase agreement are held in trust by the trustee or fiscal agent for the benefit of the joint agency;

(3) In mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;

(4) In direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association; and

(5) In direct or indirect obligations, trust certificates, or other similar instruments which are (i) guaranteed by the Government National Mortgage Association, the Federal

Home Loan Mortgage Corporation, or the Federal National Mortgage Association, and (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates. (1975, c. 186, s. 1; 1991 (Reg. Sess., 1992), c. 888, s. 5; 1993, c. 445, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 22, 1993, in subdivision (b)(2) substituted "G.S. 159-30, except that" for "G.S. 159-30"; added subdivisions (b)(2)a. and (b)(2)b.; in subdivision (b)(3) substituted "Association" for "Association, which securities shall mature or be redeemable at the option of the holder within 10 years from the date of investment"; in subdivision (b)(4) substituted "Association" for "Association, which obligations shall mature or be redeemable at the option of the holder within 10 years from the date of investment"; and in subdivision (b)(5) substituted "Certificates" for "Certificates, and which obligation, trust certificates or other similar instruments shall mature or be redeemable at the option of the holder within 10 years from the date of investment".

§ 159B-38. Confidentiality of contract discussions.

Discussions of a proposed or existing contract to which a joint agency may be or is a party for the construction, ownership, or operation of works, plants, and facilities for or incident to the generation, transmission, or use of electric power and energy or the purchase, sale, exchange, interchange, wheeling, pooling, transmission, or use of electric power and energy shall be confidential and information relating to such discussions shall not be a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a joint agency as defined by G.S. 159B-3 shall be a public record unless otherwise exempted by law. (1993 (Reg. Sess., 1994), c. 570, s. 11.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 570, s. 12, made this section effective October 1, 1994, and provides that the act shall not affect pending litigation.

§§ 159B-39 through 159B-41: Reserved for future codification purposes.

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

Sec.	Sec.
159C-4. Creation of authorities.	159C-8. Approval of bonds.
159C-7. Approval of project.	159C-10. Location of projects.

§ 159C-4. Creation of authorities.

(a) The governing body of any county is hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The .... (the blank space to be filled in with the name of the county) County Industrial Facilities and Pollution Control Financing Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution creating such authority, or by subsequent resolution. At least 30 days prior to the adoption of such resolution, the governing body of such county shall file with the Department of Commerce and the Local Government Commission of the State notice of its intention to adopt a resolution creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. All authority commissioners will serve at the pleasure of the governing body of the county. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed and qualified.

(b) Each commissioner of an authority shall be a qualified elector and resident of the county for which the authority is created, and no commissioner shall be an elected official of the county for which the authority is created. Any commissioner of an authority may be removed, with or without cause, by the governing body of the county.

(c) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(d) A majority of the commissioners of an authority then in office shall constitute a quorum. The affirmative vote of a majority of the commissioners of an authority then in office shall be necessary for any action taken by the authority. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county.

(e) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(f) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in commissioners and officers and of new projects under consideration by the authority. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, s. 1; 1989, c. 751, s. 7(47); 1991 (Reg. Sess., 1992), c. 959, s. 78.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in the first sentence of subsection (a) and in two places in subsection (f).

The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" in the second sentence of subsection (a), and in the first and last sentences of subsection (f).

§ 159C-7. Approval of project.

No bonds may be issued by an authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,
   a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county, or (ii) which

is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the environment;

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of Commerce make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In no case shall the Secretary of Commerce make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c. 704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29); 1991 (Reg. Sess., 1992), c. 959, s. 79.)

Editor's Note. — Session Laws 1989, c. 751, s. 7(48), effective July 1, 1989, directed the substitution of "Department of Economic and Community Development" for "Department of Commerce" in this section. However, references to the Department of Economic and Community Development only occurred in this section in conjunction with reference to the Secretary thereof, and were amended by Session Laws 1989, c. 751, s. 8(29).

Effect of Amendments. — Session Laws 1989, c. 727, s. 218(161), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the third paragraph.

Session Laws 1989, c. 727, s. 219(38), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the third paragraph.

Session Laws 1989, c. 751, s. 8(29), effective July 1, 1989, substituted "Secretary of Economic and Community Development" for references to the Secretary of the Department of Commerce in the first and third paragraphs.

The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" throughout the section.

§ 159C-8. Approval of bonds.

No bonds may be issued by an authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; 1979, c. 109, s. 1; 1989, c. 751, s. 7(49); 1991 (Reg. Sess., 1992), c. 959, s. 80.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in the second paragraph.

The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" in the second paragraph.

§ 159C-10. Location of projects.

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. (1975, c. 800, s. 1; 1993, c. 130, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 8, 1993, substituted "Except as provided in this section, any" for "Any" and added the second sentence in this section.

Chapter 159D.

The North Carolina Industrial and Pollution Control Facilities Pool Program Financing Act.

Sec.
159D-4. Creation of the authority.
159D-7. Approval of project.
159D-8. Approval of bonds.
159D-10. Location of projects.

§ 159D-4. Creation of the authority.

(a) The governing bodies of two or more counties are hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The North Carolina Industrial Facilities and Pollution Control Financing Authority", in order to effectuate in the most economical manner the acquisition, construction and financing of projects through pool programs.

If each governing body shall determine that it is in the best interest of the county to cause to be created and to become a member of the authority, each governing body shall adopt a resolution so finding and setting forth the names of the counties which are proposed to be initial members of the authority. The governing body of the county shall thereupon by ordinance or resolution appoint one commissioner of the authority.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member counties; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing body of each respective county appointing a commissioner has made the aforesaid determination; and (v) the desire that an authority be organized as a political subdivision and a body corporate and politic under this Chapter.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the authority is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the authority shall constitute a political subdivision and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member counties.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member counties by the Secretary of State. If a commissioner of any such county has not signed the application to the Secretary of State and such county does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such county shall be deemed to have elected not to be a member of the authority. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those counties which have elected to become members of the authority. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the authority.

(b) After the creation of the authority, any county may become a member thereof upon application to the authority after adoption of a resolution or ordinance by the governing body of the county setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159D-4, and authorizing said county to participate. Any county may withdraw from membership in the authority, provided, however, that all contractual rights acquired and obligations incurred while a county was a member shall remain in full force and effect.

(c) The authority shall consist of a board of commissioners appointed by the respective governing bodies of the counties which are members of the authority. Each commissioner shall have one vote. Each commissioner shall serve at the pleasure of the governing body by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of such oath shall be filed with the governing body of the appointing municipality and spread upon its minutes.

(d) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(e) A majority of the commissioners of the authority then in office shall constitute a quorum. Except as provided in subsection (f) of this G.S. 159D-4, the affirmative vote of a majority of all the commissioners of the authority shall be necessary for any action of the board. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county in which the project with respect to which the bonds were issued is located.

(f) If at any time there shall be more than seven counties which are members of the authority, the board of commissioners of the authority may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member counties. Any power of the authority under the provisions of this Chapter may be exercised by the executive committee of the authority between meetings of the authority, except that the executive committee may not overrule, reverse or disregard any action of the board of commissioners of the authority. The membership of the executive committee, terms of office of members thereof and the method of filling vacancies therein shall be fixed by the rules or bylaws of the board of commissioners.

(g) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(h) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in the commissioners and officers, of counties which have become members of the authority and of new projects under consideration by the authority. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 5; 1989, c. 751, s. 7(50); 1991 (Reg. Sess., 1992), c. 959, s. 81.)

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in two places in subsection (h).

The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" in the first and last sentences of subsection (h).

§ 159D-7. Approval of project.

No bonds may be issued by the authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,
  a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county in which the project is to be located or (ii) which is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State; and
  b. That the proposed project will not have a materially adverse effect on the environment;

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment; and

(3) In any case (whether the proposed project is an industrial or a pollution control project),
  a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
  b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
  c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of Commerce make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In no case shall the Secretary of Commerce make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 shall be deemed to satisfy the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant hereto. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30); 1991 (Reg. Sess., 1992), c. 959, s. 82.)

Editor's Note. — Session Laws 1989, c. 751, s. 7(51), effective July 1, 1989, directed the substitution of "Department of Economic and Community Development" for "Department of Commerce," in this section. However, references to the Department of Economic and Community Development only occurred in this section in conjunction with reference to the Secretary thereof, and were amended by Session Laws 1989, c. 751, s. 8(30).

Effect of Amendments. —

Session Laws 1989, c. 727, s. 218(162), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the third paragraph.

Session Laws 1989, c. 727, s. 219(39), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the third paragraph.

Session Laws 1989, c. 751, s. 8(30), effective July 1, 1989, substituted "Secretary of Economic and Community Development" for references to the Secretary of the Department of Commerce in the first and third paragraphs.

The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" throughout the section.

§ 159D-8. Approval of bonds.

No bonds may be issued by the authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1; 1989, c. 751, s. 7(52); 1991 (Reg. Sess., 1992), c. 959, s. 83.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in the second paragraph.

The 1991 (Reg. Sess., 1992) amendment, effective January 1, 1993, substituted "Commerce" for "Economic and Community Development" in the second paragraph.

§ 159D-10. Location of projects.

Except as provided in this section, any project of the authority shall be located within the boundaries of a county which is a member of the authority. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. (1977, 2nd Sess., c. 1198, s. 1; 1993, c. 130, s. 2.)

Effect of Amendments. — The 1993 amendment, effective June 8, 1993, substituted "Except as provided in this section, any" for "Any" and added the second sentence in this section.

Chapter 159G.

Editor's Note. — The legislation and annotations affecting Chapter 159G have been included in a recently published replacement chapter.

Chapter 159I.

North Carolina Solid Waste Management Loan Program.

Sec.
159I-29. Annual reports to Joint Legislative Commission on Governmental Operations.

§ 159I-29. Annual reports to Joint Legislative Commission on Governmental Operations.

(a) The Office of State Budget and Management and the Division shall prepare and file on or before July 31 of each year with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of loans authorized by this Chapter.

(b) The portion of the report prepared by the Office of State Budget and Management shall set forth for the preceding fiscal year itemized and total allocations for loans authorized by the Division. The Office of State Budget and Management shall also prepare a summary report of all allocations for each fiscal year; the total funds received and allocations made; and the total unallocated funds as of the end of the preceding fiscal year.

(c) The portion of the report prepared by the Division shall include:

(1) Identification of each loan made during the preceding fiscal year; the total amount of the loan commitments; the sums actually paid during the preceding fiscal year to each loan disbursed and to each loan previously committed but unpaid; and the total loan funds paid during the preceding fiscal year;

(2) A summary for all preceding years of the total number of loans made; the total funds committed to these loans; the total sum actually paid to loans; and

(3) Assessment and evaluation of the effects that approved projects have had upon solid waste management within the purposes of this Chapter.

(d) The report shall be signed by each of the chief executive officers of the two State agencies preparing the report. (1989, c. 756, s. 1; 1993, c. 553, s. 57.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, in the section catchline substituted "Governmental" for "Government".

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1994

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY
Attorney General of North Carolina

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

October 1, 1994

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Michael F. Easley

Attorney General of North Carolina

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